

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

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

Plaintiff,

vs.

**LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204,)
Defendant.)**

No. 13 CH 23386

Judge Jerry A. Esrig

Commercial Calendar S

**PLAINTIFF’S MOTION TO ADJUDICATE CONTEMPT AND
ENFORCE THE COURT’S MAY 21, 2021 FINAL JUDGMENT**

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, hereby submits the following Motion to Adjudicate Contempt and Enforce the Court’s May 21, 2021 Final Judgment.

INTRODUCTION

In September 2021, five months after this Court entered a final judgment in this action, Lyons Township High School District No. 204 (“204”) filed a new lawsuit seeking a ruling, *inter alia*, that the TTO violated this Court’s May 21, 2021 order (the “Order”) and should be held in contempt of court because the TTO re-allocated investment earnings among all the districts when calculating the “true up,” or the amounts due 204, in connection with 204’s withdrawal from the TTO. This Court has the inherent authority and jurisdiction to adjudicate whether the TTO is in contempt of the Order and the TTO requests this Court do precisely that. The TTO does not believe it violated this Court’s Order – because the Order did not prohibit or enjoin the TTO from reallocating investment earnings in the future as part of 204’s withdrawal from the TTO – and this

Court can easily and efficiently resolve the issue. If this Court finds that the TTO is in violation of its Order, the TTO will immediately take whatever action is necessary to comply with its Order.

By ruling on whether its own Order has been violated, this Court can save both the TTO and 204 tens or hundreds of thousands of school funds to adjudicate this issue via separate lawsuit. 204 has already moved for a preliminary injunction resulting in multiple witnesses and numerous hearing dates. Notably, 204 brought its new lawsuit after it had withdrawn from the TTO, likely to avoid paying for approximately 25 percent of the TTO's and its member school districts' costs in defending 204's claims. There is no doubt that public school resources will be preserved by this Court's ruling on whether the TTO violated its Order. It does not appear to make sense to litigate in front of a separate court whether the TTO is in contempt of or otherwise violated this Court's Order and this Court has its own interest in seeing that its orders are enforced.

Accordingly, the TTO respectfully requests this Court enter an order adjudicating that the TTO is not in contempt of and did not violate this Court's Order, to settle that issue. If 204 wishes thereafter to pursue its other claims in its new lawsuit, 204 can proceed along that route.

BACKGROUND

A. The TTO's Investment Allocations Process and This Court's Order.

As this Court will (more than) likely recall, the TTO pools and invests monies belonging to more than a dozen school districts, which is held in its Agency Fund. These investments include money market accounts, certificates of deposit, municipal bonds, and other investment vehicles. As these investments produce income the TTO allocates that income to each district according to its proportionate share of the Agency Fund.

Until July 1, 2021, 204 was a member of the TTO. This Court held a trial from November 2020 to March 2021, where it decided various claims asserted by each of the TTO and 204,

including the TTO's request that the Court enter a declaratory judgment that the TTO could reallocate investment income that had been erroneously overallocated to 204 during fiscal years 1995–2012.

In that part of its Order most directly addressing this request, this Court found that “the TTO has not proved any particular amount of investment earnings was over-allocated to [204].” (Order, **Exhibit A**, at 26.) The Court explained it did not accept the TTO's methodology for calculating the overallocation of investment earnings. As this Court noted, that methodology “relied on certain handwritten notes created by [former Treasurer] Healy” that “reflect[ed] his estimate” of the income to be allocated to each district, and “compared Healy's estimate of 204 pro-rata investment earnings for each quarter against the amount actually credited to 204 per the general ledger.” (*Id.* at 23-34.)

This Court found that this methodology was flawed. More specifically, this Court found that “there is no reason to compare the general ledger allocation for [204] to Healy's notes.” (*Id.* at 24.) As this Court explained, “[t]he better and only comparison that matters is the general ledger allocation for [204] versus the entire amount of investment allocation allocated to all of the districts.” (*Id.*). This Court also explained that the methodology did not “examine all of the allocations [of investment earnings] to all of the districts” and did not “perform[] a similar examination of the other member districts.” (*Id.* at 25–26.) The Court disapproved of the methodology of the TTO's expert, who had ended his analysis “in 2012 even though the investment pool continues to this day and investment earning allocations continue.” (*Id.* at 25.)

Although denying the TTO's request for declaratory relief, this Court did not enjoin the TTO from re-allocating investment income using a different methodology in connection with 204's withdrawal from the TTO. Likewise, this Court did not enter a declaratory judgment that the

TTO could not re-allocate investment income using a different methodology at the time that 204 withdrew from the TTO. In fact, during trial, this Court recognized that the TTO would need to undertake a more comprehensive analysis of investment income allocations to determine the amounts owed to 204 and the other districts in connection with 204's withdrawal from the TTO. (See, e.g., Trial Tr., Nov. 17, 2021, **Exhibit B**, at 108:17–109:4 (“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.”).)

B. Consistent with the Court’s May Order, the TTO Developed a New Methodology to Determine the Proper Allocation of Investment Income to All Member Districts Upon 204’s Withdrawal from the TTO.

On June 25, 2021, 204 notified the TTO that it had elected to withdraw from the TTO effective the start of the next fiscal year, *i.e.*, July 1, 2021. This did not take the TTO by surprise, as 204 has long made known its intention to withdraw from the TTO once the School Code permitted it to do so. Accordingly, as far back as December 2020, the TTO began the process of re-analyzing prior investment income allocations. This ongoing analysis was discussed at the TTO’s public meetings, some of which were attended by representatives of 204.

On June 30, 2021, the last day of the fiscal year, the TTO provided an estimate (specifically calling it a “forecast”) to 204 that 204’s share of the Agency Fund would be \$47,731,790.72. The TTO promptly transferred \$41,731,790.72 to 204 on July 1, 2021 and deposited the remaining \$6,000,000 into two different interest-bearing TTO bank accounts within Lyons Township, to

await a final reconciliation and determination of the amount due 204.¹ Aside from more routine reconciliation work and obtaining final numbers (as opposed to estimates) affecting the amounts due 204, the TTO also took steps to reallocate investment income, bearing in mind this Court’s prior comments.

As reflected in the minutes of the TTO’s September 23, 2021 public meeting, the TTO reviewed its “books and records and examined the interest allocations to all of the districts from Fiscal Years 1995 to FY2020.” (Sept. 23 Minutes, **Exhibit C**, at 3.) “Based upon this detailed review, the TTO Treasurer . . . determined that prior yearly interest allocations were incorrect and, as a result, the fund balances of certain districts are inaccurate.” (*Id.*) The TTO determined that “certain districts’ fund balances need to be modified.” (*Id.*) The TTO also considered “the impact each fund balance adjustment would have on all future allocations all districts.” (*Id.*)

The TTO ultimately determined that Districts 104, 105, 1065, 1067 and 204 “were over-allocated investment earnings by a total of \$1,384,386.79.” (*Id.*) The TTO then authorized its Treasurer to reallocate this amount, including \$1,263,220.09 that had been over-allocated to 204, to Districts 101, 102, 103, 106, 107, 108, 109, 2045 and 217. (*Id.*)

Aside from discussing this ongoing analysis at public meetings, the TTO also publicly published its analysis and the supporting documentation, which is easily located online at *Lyons Township Treasurer’s Office Quarterly Average Fund Balance and Quarterly Interest Allocation Examination*, Lyons Township Trustees of Schools (last visited Dec. 2, 2021), <http://www.lyonstto.net/interest.html>.

¹ The School Code provides the TTO with a 90-day winding-up period to liquidate (*i.e.*, determine the amount due and convert to cash or cash equivalents) the final amount due LT. 105 ILCS 5/5-1(b). 204 has argued that this 90-day period does not exist and the TTO was obligated to determine the final amount due 204 – and transfer that amount to 204 – immediately on July 1, 2021.

As is evident, the TTO utilized a different methodology than the one utilized in this lawsuit. Healy's handwritten estimates are not among the supporting documentation because the TTO did not rely on those estimates. Rather, the TTO compared the actual allocations as recorded on its general ledger as against the fund balances of the districts, to see if the allocations had been performed properly. The TTO also performed this analysis for all the districts, not just 204, and from 1995 through 2020. (Computer records prior to 1995 were no longer accessible.) Also, the TTO calculated the impact each misallocation would have on future allocations. This methodology is materially different from what was done the first time and followed, as best as the TTO was able, the comments and analysis this Court provided during trial and in its Order.²

C. 204 Files a New Lawsuit Requesting That the TTO be Held in Contempt of This Court's Order and Alleging That the TTO Was Not Permitted to Reallocate Investment Income in Connection With 204's Withdrawal from the TTO.

On September 22, the day before the September 23 TTO board meeting, 204 filed a new lawsuit against the TTO. 204 alleged that the TTO's failure to transfer the entirety of the \$47,731,790.72 that the TTO estimated would be due to 204, and the TTO's reallocation of investment earnings, violated the School Code and placed the TTO in contempt of this Court's Order. A copy of 204's Verified Complaint is attached **as Exhibit D**. 204 alleged that the TTO's "effort to ignore the Order, re-visit the investment earnings claim, and grant itself the relief that Judge Esrig denied constitutes both a violation of the Order and a breach of the TTO's fiduciary duty to [204]." (Compl., **Exhibit D**, ¶ 70.) 204 therefore requested four declaratory judgments. (*Id.* at 15.)

² The TTO is not suggesting that this Court thereby pre-adjudicated the methodology that the TTO would use in its September 23, 2021 board action; the TTO just notes that it listened to this Court's suggestions.

Particularly relevant here, 204 requested that the court initiate contempt proceedings by “[e]nter[ing] an order against the TTO’s Trustees and Treasurer requiring them to show cause, if they can, for their failure to abide by the terms of the final judgment set forth in the Order.” (*Id.*) 204 also requested that the court, pursuant to Section 5-1(b) of the School Code, declare that the TTO immediately transfer the \$6,000,000 in withheld funds to 204. (*Id.*) 204 also requested a TRO and preliminary injunction stating that “[p]ursuant to the [May] Order and the doctrine of res judicata,³ the TTO is barred from taking any action . . . that involves [204] or its assets with respect to the claimed over-allocation of investment earnings to [204] during the period FY1995-2012.” (*Id.* at 18.) A copy of 204’s Motion for TRO is attached as **Exhibit E**. This new lawsuit was assigned to Judge Cecilia A. Horan.

Recognizing that no court sits in a better position than this Court to decide whether the TTO violated the Order, the TTO moved to transfer the case to this Court. 204 inexplicably opposed that motion and so it was denied.

Within the 90-day window permitting the TTO to liquidate (*i.e.*, determine and convert to cash or cash equivalents) the final amount due 204, the TTO transferred a further \$4,564,087.88 of the withheld \$6,000,000 to LT, leaving \$1,263,220.09 seemingly at issue. The TTO contends that 204 has now had transferred to 204 all sums to which 204 is entitled; 204 contends it is entitled to this remaining \$1,263,220.09 that was part of the June 30, 2021 estimate. The TTO would prefer to transfer these remaining funds from the interest-bearing bank accounts into which they were placed and reinvest them, but 204 opposes any transfer and demands the remaining balance stay frozen in the TTO bank accounts.

³ The doctrine of res judicata is, of course, an affirmative defense. As the TTO is not making any affirmative claims in the new lawsuit, it is not clear why the doctrine would seemingly apply to prohibit the TTO from taking any action whatsoever.

During a preliminary injunction hearing on this issue, 204 questioned the TTO’s Treasurer, Ken Getty, significantly about this Court’s May Order. (*See, e.g.*, Tr., Oct. 6, **Exhibit F**, 106:14–111:6 (questioning Getty about this Court’s May Order and explaining to the Court that 204 intended to use the order to demonstrate that the TTO took “actions inconsistent with the Judge’s [Esrig’s] findings”); *id.* at 135:2–138:3, 140:14–145:10:14 (questioning Getty about the Court’s findings on the statute of limitations); *id.* 148:7–149:16, 150:19–153:8) (Getty explaining how the methodology for calculating investment income owed to the districts differed from the method discussed in the Court’s May Order.) 204’s new lawsuit, as demonstrated through its Verified Complaint, Motion for TRO, and line of questioning, hinges substantially upon how this Court’s Order is interpreted and whether the TTO is in violation of that Order.

The preliminary injunction hearing has been continued until December 20, where 204 will continue to argue to Judge Horan the TTO violated this Court’s Order and thereby placed itself in contempt – even though this Court can answer that question easily, in a cost-efficient manner, without wasting public funds, and without days of evidentiary testimony. The issue is simple – did the TTO violate this Court’s Order by reallocating investment income in connection with 204’s withdrawal from the TTO?

DISCUSSION

This Court has the inherent authority and jurisdiction to adjudicate whether the TTO is in contempt of its Order regardless of the fact that more than 30 days have passed since entry of the Order. *Mehalko v. Doe*, 2018 IL App (2d) 170788, ¶ 25; *see In re A.M.*, 2020 IL App (4th) 190645, ¶ 13 (“A court is vested with inherent power to enforce its orders and preserve its dignity by the use of contempt proceedings.” (quoting *People v. Warren*, 173 Ill. 2d 348, 368 (1996))).

In its new lawsuit, 204 asks the court to hold the TTO in contempt of court for violating this Court's Order. 204's prayer for relief expressly includes a request that the court "[e]nter an order against the TTO's Trustees and Treasurer requiring them to show cause, if they can, for their failure to abide by the terms of" the Order. (Ex. D at p. 15.) Issuing an order to show cause invokes a court's contempt powers. *See Milton v. Therra*, 2018 IL App (1st) 171392, ¶ 37 ("issuance of a rule to show cause is appropriate only in civil contempt"); *In re Marriage of Betts*, 200 Ill. App. 3d 26, 58 (4th Dist. 1990) (explaining that a rule to show cause is the designation appropriately used in an indirect civil contempt proceeding); 5 Nichols Ill. Civ. Prac. § 87:14 ("A rule to show cause is a means used to bring an alleged contemnor before the trial court when a failure to comply with a court order is alleged.").

204 has stated its belief to the TTO that a court does not have authority to hold an entity in contempt, and may instead only hold individuals in contempt, but this is clearly wrong. An entity can violate a court's order every bit as much as an individual can. *See, e.g., Cook Cty. v. Lloyd A. Fry Roofing Co.*, 59 Ill. 2d 131 (1974) (affirming finding of contempt against the defendant company).

Not only does this Court have the unquestioned authority to adjudicate that the TTO did not violate its Order, but there are good reasons why this Court should do so. First, this Court has the inherent interest in seeing that parties obey this Court's orders – if a party violates one of this Court's orders, particularly in a material manner such as 204 charges, this Court should act. Second, this Court's determination of this issue promotes judicial efficiency and will save the parties significant public dollars (which, on the side of the TTO, are being borne by a dozen other school districts) litigating this issue. This Court does not need to hold evidentiary hearings to figure out what its Order says or whether the TTO violated the Order – in fact, this Court can summarily

dispose of the issue merely by adjudicating that the TTO cannot have violated its Order because the Order did not impose any requirements upon the TTO in the first instance.

The TTO does not expect this Court to simply take over the new lawsuit, but this Court can determine that the TTO did not violate its Order. Moreover, if this Court adjudicates that the TTO is in contempt of its Order – which certainly was not the TTO’s intent – then the TTO will immediately take whatever action may be necessary to purge such contempt. If this Court adjudicates that its Order prohibited the TTO from reallocating interest income in the future, all this Court need do is state that and the matter will be resolved.

Frankly, issue of whether the TTO violated this Court’s Order is a simple one. This Court’s Order did not declare that the TTO may not reallocate erroneously allocated investment income in connection with 204’s withdrawal from the TTO, nor did this Court enjoin the TTO from doing so. Rather, the Order rejected declaratory relief based on the methodology of reallocating investment income presented at trial. (Ex. A at 26, 40.) Nowhere does the Order declare that the TTO lacks the authority to employ a different methodology to re-allocate investment income in connection with 204’s withdrawal. To the contrary, the TTO’s interpretation of the Order is consistent with this Court’s recognition throughout the trial that a “true-up” of the Agency Fund would inevitably occur upon LT’s withdrawal from the TTO. (*See* Ex. B at 108:17–109:4 (“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.”).)

In adjudicating this issue, this Court should state that the Order does not prohibit the TTO from taking any action with respect to 204's withdrawal from the TTO, does not require that the TTO turn over any specific amount of funds to 204 in connection with 204's withdrawal, and does not prohibit the TTO from utilizing a different methodology to reallocate investment income. To be clear, the TTO is not asking this Court to rule that the TTO's computations are accurate. Enforcing its Order by clarifying that the TTO was not prohibited from taking these actions will also save considerable public dollars.

Circuit courts have the inherent authority to enforce their orders after judgment. *See Smithberg v. Ill. Mun. Retirement Fund*, 192 Ill. 2d 291, 297 (2000) (“It is an elementary principle of law that a court is vested with the inherent power to enforce its orders.”); *In re Marriage of Allen*, 343 Ill. App. 3d 410, 412 (3d Dist. 2003) (“Although the trial court loses jurisdiction to amend a judgment after 30 days from entry, it retains indefinite jurisdiction to enforce the judgment.”).

Though this Court recognized that, by closing argument, the TTO no longer sought relief related to its investment allocation claim, this Court nonetheless took the time to provide its analysis of the claim, noting that it “[was] faced with a live claim which the parties litigated at great expense.” (Ex. A at 23.) Therefore, the Court “offere[d] . . . analysis and a ruling.” (*Id.*) The Court identified several issues with the specific methodology for reallocating investment income that the TTO presented at trial. The Court found that the analysis presented at trial relied on notes from Healy that lacked supporting documentation, making this analysis “neither appropriate nor reliable and proves nothing.” (*Id.* at 23–25.) The analysis at trial also did not “examine all of the allocations [of investment earnings] to all of the districts” and did not “perform[] a similar examination of the other member districts.” (*Id.* at 25–26.) The Court also disapproved of an

expert's method of re-allocating investment income because the analysis "ended in 2012 even though the investment pool continues to this day and investment earning allocations continue." (*Id.* at 25.)

In crafting its new methodology to reallocate investment earnings upon 204's withdrawal from the TTO, the TTO made sure that its methodology complied with the Court's analysis and ruling, insofar as the TTO was able to and understood this Court's analysis. The TTO did not rely on Healy's notes. (*See* Ex. C at 2–3.) The TTO examined the books and records of all districts. (*Id.* at 3.) The TTO examined the compounding effects of reallocating investment income on subsequent years. (*See id.*) Rather than proposing to adjust only allocations affecting 204, as contemplated at trial, the TTO proposed adjusting allocations for all the districts. (*See id.*) The TTO respectfully submits that the Order contemplated the TTO taking these types of actions in the future, as the Court noted these specific flaws with the methodology presented at trial without enjoining the TTO from fixing these flaws in the future. While the TTO does not ask this Court to determine whether the TTO's computations were correct, this Court should clarify that it was not prohibiting the TTO from engaging in this analysis, and indeed understood that the TTO would be doing so in the future.

Similarly, the Order did not adjudicate that any particular amount was due 204 upon its withdrawal from the TTO, or indeed require that the TTO take any particular action (or prohibit the TTO from taking any action) in connection with 204's withdrawal from the TTO. Indeed, the Order is silent on these issues. LT may choose to pursue its new lawsuit regardless of this Court's finding that the TTO did not violate and is not in contempt of the Order, but 204 should not be permitted to accuse the TTO of violating this Court's orders and then avoid having this Court adjudicate precisely that issue.

CONCLUSION

The TTO respectfully requests that the Court enter an order stating that the TTO did not violate and is not in contempt of this Court's Order because the Order did not prohibit the TTO from using a methodology different from the analysis presented at trial to reallocate investment earnings upon 204's withdrawal from the TTO, did not require the TTO to provide any specific amount of funds to 204 upon LT's withdrawal, did not require the TTO to take any particular action upon 204's withdrawal from the TTO, did not prohibit the TTO from taking any particular action upon 204's withdrawal from the TTO, and did not otherwise prohibit the TTO from determining the amount of funds due 204 upon withdrawal, in addition to entering any further relief this Court deems appropriate.

Dated: December 14, 2021

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

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Exhibit A

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

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

Plaintiff and
Counter-Defendant,

v.

Lyons Township High School
District No. 204,

Defendant and
Counter-Plaintiff.

No. 13 CH 23386

Calendar S

Judge Jerry A. Esrig

ORDER

This cause coming to be heard for bench trial, the court having heard, considered and weighed the evidence, taking into account the credibility of the witnesses, and having considered the arguments and authority submitted by counsel, makes the following findings of fact and law.

I.

Background

Plaintiff and counter-defendant Township Trustees of Schools Township 38 North, Range 12 East (“TTO”) is a governmental body, organized pursuant to the Illinois School Code, 105 ILCS 5/8-1, *et seq.* The TTO consists of a three-member elected Board of Trustees who supervise a Treasurer and the Treasurer’s office, including staff.¹ The TTO’s function is to receive, hold, manage, invest and account for tax funds collected on behalf of the TTO’s member districts.

All tax monies collected for the member districts are held and invested by the TTO in a pooled account, but the moneys of each school district must “be accounted for separately in all respects, and the earnings from such investment shall be sepa-

¹ Unless otherwise indicated TTO refers to the Treasurer, the Treasurer’s office and the Trustees.

rately and individually computed and recorded, and credited” to the school districts. 105 ILCS 5/8-7 The districts make their own budgeting decisions and determine what checks are to be written against their funds, but the checks are issued and signed by the Treasurer. The TTO has no input into an individual district’s budgeting or spending decisions, and may not spend a district’s funds without authorization from the district. 105 ILCS 5/8-16.

Each member district is required to pay a proportionate share of the TTO’s expenses. 105 ILCS 5/8-4. Each district’s proportionate share is determined by dividing the total amount of all school funds handled by the TTO by the amount of the funds belonging to that district. *Id.* The TTO does not receive tax revenue independently of the school districts; it has no independent source of funding and no funds of its own.

The Trustees have an affirmative legal duty to supervise the Treasurer and review his financial dealings. In this regard, section 5-20 of the School Code provides as follows:

At each regular meeting, and at such other meetings as they may think proper, the trustees of schools shall examine all books, notes, mortgages, securities, papers, moneys and effects of the corporation, and the accounts and vouchers of the township treasurer or other township school officer, and shall make such order for their security, preservation, collection, correction of errors, if any, and for their proper disposition, as may be necessary.

105 ILCS 5/5-20.

Defendant Lyons Township High School District No. 204 (“LT”) is a high school district and one of approximately twelve districts whose funds are managed by the TTO. LT is also governed by an elected board. During the relevant time period, it has had the largest fund balance of any of the member districts, usually owning approximately 25% of the total of the pooled funds.

From 1998 to 2012, the TTO Treasurer was Robert Healy. In 2012, it was discovered that Healy was embezzling school district funds. As a result, he was convicted and sentenced to prison. No comprehensive forensic audit was ever conducted, but it was estimated that Healy stole in excess of \$1 million in school district funds.

A township trustee arrangement was once common in Illinois, but most treasurer's offices have been eliminated. LT has been an unhappy member of the TTO going back at least to the late 1980s. As a large high-school, LT had its own business office and believed it could perform its own accounting, money management and investment functions better than the TTO. As the district holding the largest fund balance, it also believed that it was paying a disproportionate share of TTO expenses while not receiving commensurate benefits.

II.

TTO Claims

A.

Agreement to Credit LT for Certain Accounting Expenses

1.

Pertinent Facts

Beginning at least as early as 1988, LT was unhappy as a member of the TTO. Because of LT's size and in-house requirements, LT had its own business office which performed many of the tasks which the TTO was otherwise required to perform for LT. In addition, LT was unhappy with the quality of work performed by the TTO and considered the reports and information received from the TTO inadequate. LT preferred to perform its own bookkeeping and accounting work in-house and believed that it could do so more efficiently and capably than could the TTO.

Correspondence and meeting minutes reflect LT's complaints that it was paying more than its fair share for TTO services and was performing services for itself that the TTO was performing for other districts resulting in inefficiencies and unnecessary expense. On the other hand, the TTO complained that LT was, by its own choice, duplicating services performed by the TTO and that any inefficiencies were caused by LT's deliberate decision not to rely on the TTO's services.

Over the years, LT let it be known that it was considering affiliating with another township treasurer's office or petitioning the state legislature to allow LT to hold, manage and invest its own funds. Given the size of LT, its fund balance, and LT's significant pro rata share of TTO expenses, the TTO knew that its own significance would be markedly reduced if LT left the group. To stave off attempts by LT to withdraw, in late 1999, the TTO began to formally negotiate with LT for an arrangement which would allow LT to perform accounting work which

the TTO would otherwise have to perform in exchange for a credit against LT's pro rata contributions to the TTO. This would dissuade LT from seeking withdraw from the TTO.

In May 1999, Todd Shapiro, Chairman of LT's Finance Committee and Vice President of LT's Board, directed Lisa Beckwith, LT's business manager, and Healy "to work together during the summer months to prepare options for the [LT] Board of Education to review that would provide more equity in the services provided [by the TTO to] the District." LT Ex. C-3. On July 15, 1999, Healy wrote to the TTO Trustees, as follows:

Recent meetings indicate an increasingly strained relationship between the administration of this office and the Board of Education of High School District #204. During the next year it will be necessary for this office to absorb costs related to the High School District 204 business function or face legislative actions detrimental to the continued operation of the School Treasurer's office. A goal then for the upcoming year is to find an agreeable middle ground and keep the business relationship between the District Board and the Treasurer's office as amicable, as mutually profitable and as equitable as possible.

LT Ex. C-5. The July 27, 1999 minutes of the TTO Trustees contain the following entry:

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.

LT Ex. C-6.

On August 18, 1999, Healy wrote Beckwith a letter, in which he outlined five "proposed possible solutions" to "balance the efforts of our respective staffs." One of these proposals involved "a partial funding by the Treasurer's office to cover

[LT's] costs for the business functions [LT] now performs." LT Ex. C-7. Healy noted:

If the responsibilities for the Accounts Payable and Payroll production were to be returned to the [TTO] it would mean higher costs for the [TTO] in the form of salaries and benefits for increased staff and higher related expenses to accommodate the work load.

Id. He predicted that the TTO Trustees, who were copied on the letter, "would logically conclude" that this was a "reasonable" proposal. *Id.*

On September 29, 1999, the LT Finance Committee met and "directed Dr. Beckwith to work with Mr. Healy to further define the costs of the Business Office that can be charged to the [TTO]." LT Ex. C-8. The minutes further state, as follows:

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.

Id.

On February 29, 2000, Beckwith wrote a memo to Healy listing the following as the "responsibilities that [LT] proposes become the direct cost and responsibility of the [TTO]":

Payroll and accounts payable bank reconciliation.

Balance monthly totals between [TTO] and [LT].

Provide printing costs for checks and envelopes for accounts payable, payroll, imprest and student activities.

Annual salary and benefit cost for three employees listed below.

LT Ex. C-9. The memo listed three employee categories – Programmer Analyst, Accounts Payable Bookkeeper and Payroll Bookkeeper – and itemized the costs, including benefits, for each. The total was \$106,403. The memo concluded as follows: “An invoice will be sent to the Township Treasurer in May with receipt of funds expected prior to close of the fiscal year.” *Id.*

The TTO Trustees met on March 21, 2000. Trustees Russell Hartigan and Joseph Nekola were present. Nekola is now dead. Hartigan testified at trial, but his recollection of events which took place more than 20 years ago was understandably hazy. The meeting minutes state as follows:

Healy submitted to the Trustees the proposal from [LT] stating this office absorb certain payroll, accounts payable and computer processing expenditures by [LT]. As these costs would be incurred by the [TTO] if [LT] were to totally utilize the facilities of the TTO. [sic] These costs would certainly be incurred. A point to be clarified is to make sure that workman’s compensation is covered. A further recommendation by Trustee Hartigan is that the trustees be given an evaluation of the employee’s performance for those aforementioned personnel employed at [LT].

A motion was made by Russell Hartigan seconded by Joseph Nekola to accept the proposal given to the [TTO] Trustees by [LT].

ROLL CALL: Ayes – Joseph Nekola, Russell Hartigan

 Nays – None

LT Ex. C-10. A copy of Beckwith’s February 29, 2000 memo is included in the Board Packet for the meeting. *Id.*

The LT Finance Committee met on March 22, 2000. The minutes state the following:

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. The Treasurer will also offer additional services to include reconciliation of all funds and bank accounts as well as providing

checks and envelopes to the district. This adjustment creates more parity between the services provided all member districts. This will be effective for the 1999-2000 school year. This change is subject to approval by the Township Treasurer Trustees.

LT Ex. C-11.

On June 14, 2000, Beckwith wrote a memo to the LT Board stating the following:

Attached is a copy of the Lyons Township High School Treasurer's bill for the 1999-2000 school year. The District's share is \$165,476, which is a 6% increase over the 1998-1999 school year. Also attached is a copy of the agreement that we made with the Treasurer, which pays the District \$106,403 for comparable services provided to other township districts but not to Lyons Township High School. Board of Education action is to approve a payment in the net amount of \$59,073.

LT Ex. C-13. The LT Board met on June 19, 2000. Taken together the agenda, minutes and attachments reflect that payment of the TTO invoice after a credit for the services provided by LT as set forth in the Beckwith memos of February 29, 2000, and June 14, 2000, was considered and approved on the Board's Consent Agenda. LT Ex. C-14. There is no dispute that the TTO invoiced LT for \$165,476.00 for its total pro rata share for the fiscal year ending June 30, 2000, and that LT authorized and the TTO accepted payment in the amount of \$59,073, *i.e.*, the amount remaining after the crediting LT with \$106,403 for services provided.

As mentioned above, Beckwith's February 29, 2000 memo contemplated that "[a]n invoice will be sent to the Township Treasurer in May with receipt of funds expected prior to close of the fiscal year." Subsequent annual memos sent by LT contained this same language. Nevertheless, in each year the transaction followed the pattern set for fiscal year 1999. There is no dispute that for each succeeding fiscal year up to and including fiscal year 2012, LT would send the TTO a memo outlining the costs associated with that fiscal year's agreed-upon accounting work. When LT received the TTO's invoice for LT's pro rata share of TTO expenses, LT would subtract its credit, as outlined in the annual memo, and authorize payment

to the TTO for the balance. The TTO would accept the net amount, deduct the net amount from LT's account and credit the net amount to the TTO. LT's associated expenses grew each year until these expenses exceeded LT's pro rata share of the TTO's expenses. At that point, LT stopped authorizing any payment to the TTO for pro-rata expenses; however, LT never requested and never received credit for the amount by which LT's in-house accounting fees exceeded its pro rata share.

By 2013, Healy's perfidy had been discovered, he had been fired and new TTO Trustees had been elected. In letters written in March and April 2013, Mark Thiessen, the new president of the TTO Board, advised LT that the TTO did not believe the School Code permitted LT to pay less than its pro rata share of TTO expenses; did not believe that the TTO Trustees had ever authorized an arrangement to credit LT for accounting services; would no longer allow LT a credit for accounting services LT performed; and was "exploring all . . . options for recovery associated with [LT's] lack of payment for legally obligated contributions to the TTO." TTO Ex. 62.

2.

Analysis

The TTO's accounting expense claim seeks a declaratory judgment that the Treasurer is authorized to debit all of the amounts taken by LT as a credit for accounting services from LT's balance held within the Agency Fund. The TTO argues that the TTO Trustees never agreed to credit LT for the accounting services; that there was no valid contract between the parties; and that allowing LT to pay less than its pro rata share violates Section 5/8-4 of the School Code.

As to the approval of the TTO Trustees, the TTO maintains that use of the word "accept" in the March 21, 2000 minutes does not reflect approval of the proposal, but only an acknowledgement that the Trustees had received the proposal for further consideration. The court finds that there is no credible evidence supporting the TTO's position. The testimony of the TTO's expert and other testimony that the vote reflected in the meeting minutes on March 21, 2000, was not a vote to accept the proposal but rather a vote to accept delivery of the proposal and a deferral of further action was not credible. That interpretation is inconsistent with the plain meaning of the word "accept"; the technical meaning of the word as defined by Robert's Rules of Order, as conceded by the TTO's expert; the use of the

word on occasions in minutes of Trustee meetings; and the conduct of the parties both before and after the vote. The court finds that the proposal to credit LT with the cost of performing certain accounting and bookkeeping tasks which the TTO would otherwise have had to perform was approved by the TTO Trustees knowingly, deliberately and with full disclosure.

The court also rejects the TTO's argument that the credits must be reversed because the parties had no valid, enforceable contract. Whether or not the proposal accepted by the TTO Board on March 21, 2000, was sufficiently concrete to establish a binding contract is immaterial to the issues before this court. The evidence of a 12 year course of conduct is undisputed. The TTO now seeks to unwind that conduct, even though it was a full and willing participant and beneficiary of the course of dealings.

As to the crediting of LT for accounting services, the parties engaged in a course of dealing over 12 years without ever once disagreeing about the arrangement or their respective responsibilities. The TTO never argued that LT did not perform in accordance with the parties' understanding. And even though the amount of the credit requested by LT rose annually, the TTO never formally questioned the amount or refused to issue the credit as requested by LT. Similarly, LT never argued that the TTO did not have the unilateral right to terminate the arrangement. In short, there has never been a dispute over the terms of the parties' arrangement. Instead, the TTO's arguments concern whether the course of conduct was properly authorized and permissible.

It is a well-established principle of contract law, that parol evidence, including evidence of a course of conduct, is admissible to supply missing terms of a contract. *Guel v. Bullock*, 127 Ill. App. 3d 36, 40 (1st Dist. 1984). "A course of dealing between the parties is admissible 'to explain, supplement, or add to the agreement (but not contradict it).'" *Midwest Builder Distrib. v. Lord & Essex*, 383 Ill. App. 3d 645, 673 (1st Dist. 2007) (quoting *Scott v. Assurance Co. of Am.*, 253 Ill. App. 3d 813, 818 (4th Dist. 1993)). Even if no formal contract existed, the court cannot ignore the undisputed evidence of a course of conduct over many years.

Most importantly, this is not an action for breach of contract. Nor is it an action to compel future performance under the terms of a contract. Even if no binding agreement existed,

that alone, does not require or permit the court to reverse the parties voluntary conduct. In order to rescind a contract, the party seeking rescission must show that that the parties can be restored to the status *quo ante*. *Horwitz v. Sonnenschein Nath & Rosenthal LLP*, 399 Ill. App. 3d 965, 973 (1st Dist. 2010). Even assuming that the parties had no contract, the court finds that before the TTO can unwind the parties' 12 year course of dealings, the TTO must show not only a compelling reason to do so, but also that the status *quo ante* can be restored. Here, the evidence established that the TTO can make no such showing.

The TTO argues that even if the Trustees approved a credit for Fiscal Year 2000, they did not and could not bind future Boards. The court agrees, but, this case does not turn on this issue. The books and records of the TTO reflect that in each and every fiscal year at issue, LT requested, and the TTO agreed to, a credit for the accounting services provided by LT. TTO employees entered these credits on the books and records maintained by the TTO. In other words, the TTO's own books and records reflect that the TTO agreed to and issued the credit for each and every fiscal year at issue.

The TTO argues that in the fiscal years after 2000, the Board did not authorize and, in fact, had no knowledge of the arrangement. The facts and law do not support this argument. First, “[g]enerally, the knowledge and conduct of agents are imputed to their principals.” *McRaith v. BDO Seidman, LLP*, 391 Ill. App. 3d 565, 589 (1st Dist. 2009). Here, there is no doubt that Healy and other TTO employees knew of the credits. Healy negotiated the arrangement, LT sent memos to Healy annually with a breakdown of the credit requested, and TTO staff, supervised by Healy, made general ledger entries reflecting all of the transactions based on the LT memos.

The TTO argues that Healy's knowledge should not be imputed to the Trustees because Healy was stealing from the TTO. It is true that there is an exception to the imputation rule where “the agent's interests are adverse to the principal.” *Id.* “[W]hen a corporate officer or agent engages in fraudulent conduct for the distinctly private purpose of lining his own pockets at his corporation's expense, it is unlawful, as well as illogical, to impute the agent's guilty knowledge or disloyal, predatory conduct to his corporate principal.” *Id.* at 590 (quoting *Reider v. Arthur Andersen, LLP*, 47 Conn. Supp. 202, 211 (2001)). As to the arrangement with LT, however, there was no

fraud or concealment. Healy's interest and the Trustee's interests were aligned: both wanted to placate LT and keep it in the fold. The TTO's argument also ignores the knowledge of other TTO employees.

Second, as the facts recited above demonstrate, the TTO Trustees were fully informed of the negotiations leading up to the March 22, 2000 vote on the proposal. The Trustees wanted to placate LT to avoid its possible withdrawal from the TTO. They knew that the proposal was the product of a years' long dispute and that one year's credit was not going to bury the issue. Hartigan and Nekola, the two Trustees who voted to accept the proposal, served as Trustees until at least April 2005 and January 2007, respectively. There was evidence that in 2003 or 2004, Nekola complained of the increasingly large credit claimed by LT, but no evidence that he took any action. Unlike Healy's embezzlement, there is no evidence that Healy or the TTO staff concealed the arrangement or the credit.

Moreover, as mentioned above, section 5-20 of the School Code imposes upon the Trustees an affirmative legal duty to supervise the Treasurer and his staff and to perform a comprehensive review of the TTO's financial dealings. Each fiscal year, the credit given to LT against its pro rata bill had a significant impact on the TTO's budget. It would have been impossible for the Trustees to discharge their statutory duties without being informed, or informing themselves, of the credit. In fact, that statutory duty is the Trustees' *raison d'être*. Minutes of TTO Trustee meetings reflect the Trustees reviewing the books, records and expenses of the TTO. The TTO offered no evidence that the arrangement or credits was concealed from the Trustee. Accepting the TTO's argument would not only require the court to ignore the evidence of actual knowledge, but also to assume that for 12 years, the Trustees utterly failed to perform their statutory duties. In the absence of any evidence to the contrary, the court finds that the Trustees performed the basic functions as prescribed by law and had actual knowledge of the credits issued each year.

The TTO argues that the credits given to LT must be reversed because they violate the requirement in School Code section 8-4 that each district pay its pro rata share of TTO expenses. The court disagrees.

The evidence is that the TTO routinely engaged independent contractors to perform services for it. For example, it hired

bookkeeping and accounting staff on an independent contractor basis and received investment advice from independent contractors. The parties agree that nothing prohibited the TTO from doing so.

The arrangement between LT and the TTO to credit LT for accounting services that the TTO would otherwise have had to perform is in the nature of an independent contractor agreement. No one would challenge the TTO's authority to have engaged or paid an independent contractor to perform the bookkeeping and accounting services that LT was performing for itself. The court sees no meaningful distinction between the TTO's engaging independent parties to perform those services and its engaging LT to perform those services. That the TTO paid, or credited, LT for performing services the TTO would otherwise have had to perform does not mean that LT did not pay its pro rata share of TTO expenses or otherwise violate section 8-4 of the School Code. LT simply received a credit against its pro rata share for services rendered to the TTO – services which the TTO would otherwise have had to perform. The court finds that the TTO had the authority to credit LT for accounting services performed for itself on behalf of the TTO. *See Ryan v. Warren Twp. High Sch. Dist.*, 155 Ill. App. 3d 203, 205 (2nd Dist. 1987) (authority to act may be implied from the statutory scheme).

Nor does the court believe that a formal written inter-governmental agreement was required. First, the parties themselves specifically considered the issue and concluded that no such agreement was necessary. Second, for accounting and investment functions, the parties were connected by a statutory structure. No additional inter-governmental agreement was necessary to further the ends of the statutory mandate. The TTO has not cited any case which requires a township treasurer, responsible for the accounting and investment functions for a school district, to sign an intergovernmental agreement for every delegation of task or other accommodation that might take place between these related entities. The TTO has never entered into an intergovernmental agreement when dealing with its own statutory members. As is discussed more fully below, the TTO acted to guarantee a loan of one of its members without signing a formal intergovernmental agreement.

Further, the TTO is in no position to complain about inadequate formalities when it performed its obligations and received the benefits of the arrangement. A party that accepts

the benefits of an agreement is estopped to deny its existence. *Grot v. First Bank*, 292 Ill. App. 3d 88, 93 (1st Dist. 1997); *In re Estate of Herwig*, 237 Ill. App. 3d 737, 744, (2nd Dist. 1992); *Wasserman v. Autohaus on Edens, Inc.*, 202 Ill. App. 3d 229, 238-39 (1st Dist. 1990).

While “Illinois courts have consistently held that the doctrine of equitable estoppel will not be applied to governmental entities absent extraordinary and compelling circumstances”, *Matthews v. Chi. Transit Auth.*, 2016 IL 117638, ¶ 94, the court finds that application of the doctrine is justified in this case. The courts are reluctant to apply estoppel to governmental entities, because “[i]f the unauthorized acts of a governmental employee were allowed to bind a municipality through equitable estoppel, the municipality would remain helpless to remedy errors and forced to permit violations to remain in perpetuity.” *Village of Wadsworth v. Kerton*, 311 Ill. App. 3d 829, 837 (2nd Dist. 2000). That policy concern is less compelling where the adverse parties are both governmental entities, a statutory scheme places them in relation to one another, and the dispute arises out of that inter-connectedness. Here, refusing to apply estoppel works adverse consequences upon another unit of local government. If the TTO were permitted to undo 12 years of practice between the parties, another governmental entity – LT – would be unable to rely on the conduct of its governmental partner, would and be helpless to budget and otherwise plan for the conduct of its fiscal affairs.

Second, the traditional prerequisites for application of estoppel to a governmental entity are present here. “To invoke estoppel against a municipality, two requisites must be met: (1) an affirmative act on the part of the municipality; and (2) the inducement of substantial reliance by the affirmative act.” *Village of Wadsworth*, 311 Ill. App. 3d at 837. “The affirmative act that induces a party’s reliance must be an act of the municipality itself, such as a legislative enactment, rather than the unauthorized acts of a ministerial officer. A municipality cannot be estopped by an act of its agent beyond the authority expressly conferred upon that official.” *Id.*

Here, the court finds that the TTO Trustees were aware of and authorized Healy to negotiate with LT over the accounting expense issue. The Trustees then affirmatively voted to delegate the work to LT and credit LT for the cost of that work. Each subsequent year, as they were required to do by statute, the Trustees explicitly approved the continued arrangement by

approving the budget and reports of the TTO. As noted above, the court finds that the arrangement between LT and the TTO was not the result of secret, unilateral actions by Healy, but rather was fully disclosed and approved each year by the TTO Trustees. As such the requirement of affirmative action by the Trustees is satisfied.

The court also finds that in issuing LT a credit each year for the services performed, the TTO induced LT to rely on its acts and that LT's reliance was significant. First, LT incurred the expense of performing work which it otherwise could have passed on to the TTO. Second, LT refrained from taking steps to remove itself from the TTO. These actions or inactions were the direct result of the TTO willingness to issue the credits.

Finally, even if, in years after 2000, the Treasurer lacked authority to issue credits to LT, the Trustees ratified the Treasurer's actions. "[A] principal ratifies a contract made by an agent when, with knowledge of all material facts, it either expresses its assent to the contract or fails to disaffirm the contract within a reasonable time and accepts benefits under it." *Grot*, 292 Ill. App. 3d at 93 (citing *Old Sec. Life Ins. Co. v. Cont'l Ill. Nat'l Bank & Trust Co.*, 740 F.2d 1384, 1392 (7th Cir. 1984).

"[T]he doctrine of ratification fully applies to municipal and other public bodies." *Athanas v. City of Lake Forest*, 276 Ill. App. 3d 48, 56, (2nd Dist. 1995). "Where an agent has acted outside the scope of his or her authority, a principal may ratify the unauthorized act and the ratification is equivalent to original authority confirming that which was originally unauthorized." *Id.* "Ratification, which may be express or implied, occurs when the principal, with knowledge of the material facts of the unauthorized action, takes a position inconsistent with non-affirmation of the action." *Id.* at 55-56. "Stated another way, a principal (including a city) can ratify the actions of the agent by not repudiating the agent's actions once it has knowledge of the actions, or by accepting the benefits of the actions." *Id.* at 57. *See also Ryan*, 155 Ill. App. 3d at 207 ("although the contract was irregularly entered into, plaintiff is entitled to be reimbursed for his services where the school district ratified the contract by accepting the services and by making the partial payment"); *Bd. of Supervisors v. Lincoln*, 81 Ill. 156, 157 (1876) (estoppel is applicable to a municipal corporation where it fails to assert a right and acts so as to influence the actions of another.)

Therefore, the court denies the TTO's request for declaratory relief with respect to the accounting credits claim for Fiscal Years 2000 through 2012.

B.

LT's Refusal to Pay Pro Rata Share of Other TTO Expenses

As mentioned above, in the spring of 2013, the new president of the TTO Board advised LT that the TTO would no longer credit LT for accounting services and that the TTO would seek to recover for past credits. Shortly thereafter, LT began to challenge certain TTO expenses and to refuse to pay its pro rata share of those expenses. Beginning with Fiscal Year 2013, LT deducted from TTO invoices issued to it LT's pro rata share of certain financial software, certain other expenses including the fees of an outside public relations firm, and TTO legal expenses. Beginning with Fiscal Year 2013 and continuing through Fiscal Year 2019, LT has refused to pay \$764,789.33 of the pro rata share invoiced by the TTO. The TTO seeks a declaration that it may deduct this amount and pre-judgment interest from LT's account balance. The court agrees.

1.

Infinite Visions Software

With respect to the TTO's purchase of the Infinite Visions software, LT argues that the expense is not authorized by the School Code. Section 5-17 authorizes the TTO to "incur the cost of a record book," which does not include, according to LT, accounting software licensing, programming, training and modules for human resources and attendance. LT also offered evidence that it objected to the Infinite Visions software because it was not compatible with and duplicated software already used by LT.

Nothing in the statute gives LT or this court the authority to second-guess TTO decisions or to substitute their business judgment for that of the TTO. LT cites no case that suggests otherwise. LT's sole cognizable argument is that the TTO exceeded its statutory authority when it purchased the accounting software.

LT acknowledges that the statute is more than 100 years old. The drafters could not have contemplated computer software of any kind. Nevertheless, LT implicitly concedes that the TTO is authorized to purchase computers and accounting

software. The TTO's accounting systems have been computerized for many years without objection from LT.

“The cardinal rule in statutory construction is that the statute be construed so as to ascertain and give effect to the intention of the General Assembly as expressed in the statute.” *Inskip v. Bd. of Trs.*, 26 Ill. 2d 501, 510 (1962). Section 1.01 of the Statute on Statutes provides: “All general provisions, terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out.” A court “must consider the spirit of the enactment, and that spirit will control over the letter of the statute, where there is a conflict.” *Inskip*, 26 Ill. 2d at 510. “The intent of the legislature in enacting a statute must be determined by examining the *entire* statute and by construing each material part of the legislation together.” *Castaneda v. Ill. Human Rights Comm’n*, 132 Ill. 2d 304, 318 (1989) (emphasis in original).

Here, viewing the School Code as a whole, the legislative intent was to form a governmental unit which would create efficiencies for its member districts in connection with the accounting for and investing of the member district's funds, while maintaining the independence of those districts. The legislative intent was to permit the TTO to acquire those tools which would allow it to carry out its functions. Nothing suggests that the legislature intended to limit the TTO to the tools that existed at the time the statute was originally enacted. Nothing suggests that the TTO is required to integrate its systems with those of any or all of its member districts. And nothing in the statute expressly prohibits the TTO from acquiring management tools for the use and benefit of its member districts. Authority to act may be implied from the statutory scheme. *Ryan*, 155 Ill. App. 3d at 205.

As discussed above, the TTO has no funds of its own. Any TTO expenditure must be paid pro rata from funds of the districts. To the extent any district fails to pay its pro rata share, the burden of that district's non-participation falls on the other districts. None of the districts have any statutory ability to control TTO decision making. The TTO Trustees answer to their constituents, not the districts. While the School Code provides that the TTO cannot spend a district's funds without a district's approval, the statute also provides that a district cannot avoid paying its pro rata share of TTO expenses.

It may be that Infinite Visions includes certain software modules that have the capability to perform functions which are outside the strict limits of the TTO's statutory duties. LT does not complain, however, that it is being forced to use these modules, that the TTO has taken control of LT's human resource or attendance functions or that the TTO has otherwise acted outside of its statutory authority to control or perform district functions.

Further, there was no evidence that the Infinite Visions software was not used by the TTO to perform functions within its statutory authority. There was no evidence of cost attributable to the offending modules or that these modules increased the cost of the software or, if they did so, by how much. There was no evidence that other districts are using these modules, such that LT is indirectly subsidizing the other districts. Even assuming, however, that the TTO paid for software functions which go beyond the strict limits of the TTO's statutory duties; that other districts, but not LT, use this software; and that, therefore, LT is called upon to indirectly subsidize other districts, the court declines to intervene. First, much the same could be said about the 12 year arrangement by which LT received credits for accounting functions: that arrangement accommodated LT, not the other districts. Second, there is no evidence that the amount of subsidy, if any, is anything but *de minimus*. Third, the court will not interfere with the discretionary acts of public officials absent fraud, corruption, oppression or gross injustice. *Bd. of Educ. v. Bd. of Educ.*, 112 Ill. App. 3d 212, 218 (1st Dist. 1983). The court finds that the acquisition of the Infinite Visions software is not so far outside the statutory authority of the TTO or so favors one district over another that court intervention is required or advisable, especially in the absence evidence of quantifiable damages to LT.

2.

Other Expenses

To the extent that LT has refused to pay its pro rata share of other expenses, the court finds no legal justification for its failure to do so. As to the cost of a public relations consultant, the court finds that this is not a prohibited expense. *See Ryan*, 155 Ill. App. 3d 203, 205 (authority to hire public relations firm implied from school district's power to hold regular and special meetings open to the public).

3.

Legal Expenses

Beginning in Fiscal Year 2014, LT refused to pay its pro rata share of TTO legal fees, principally because those fees have been incurred in connection with this lawsuit. LT argues, that under the American Rule, each party is responsible for its own legal fees. Absent a statutory or contractual fee shifting provision, LT argues, it is impermissible and inequitable to require it to pay a pro rata share of the costs its adverse party's legal fees to prosecute this action. The TTO argues that it has the authority to engage lawyers and file suit; that in doing so it incurs an expense; and that, pursuant to statute, all TTO expenses, including legal fees must be paid pro rata, by the districts.² TTO argues that the School Code governs and that the American Rule has no applicability. Without denying the unfairness of the result, the court agrees with the TTO.

The American Rule provides that, absent a statutory or contractual provision to the contrary, the prevailing party in a lawsuit may not recover its attorneys' fees from its adversary. *Morris B. Chapman & Assocs. v. Kitzman*, 193 Ill 2d 560, 572 (2000) ("Illinois generally follows the 'American Rule': absent statutory authority or a contractual agreement between the parties, each party to litigation must bear its own attorney fees and costs, and may not recover those fees and costs from an adversary.") Here, however, the TTO does not seek to "recover" its legal fees in the sense contemplated by the American Rule. The TTO is not asking the court to award legal fees to the TTO as a prevailing party. Rather, the TTO assessed against LT its pro rata share or attorneys' fees in the same way the TTO has assessed against LT a pro rata share of all other TTO expenses.

The Trustees clearly have the authority to hire lawyers and file lawsuits. See 105 ILCS 5/5-2; *Lynn v. Trs. of Schs.*, 271 Ill. App. 539, 540 (4th Dist. 1933) (Township school trustees have authority to sue as trustees to recover moneys owing to the several school districts of their township.) As with any other TTO expense, legal fees must be paid pro rata by the member districts. There is no other source of funds and there is no other statutorily permissible method for allocating TTO expenses.

² To the extent LT argues that this suit is brought by the Trustees and that the Trustee's legal fees are not an expense of the Treasurer, the court disagrees. The court views the Treasurer, his office, and the Trustees as a single governmental entity.

Even if the American Rule applied, School Code section 5/8-4 would be a statutory provision within the exceptions contemplated by the Rule.

While this result may seem inequitable in this case, that inequity is the inevitable result of the statutory scheme. As the TTO notes, any taxpayer prosecuted criminally or sued civilly by a unit of government effectively pays a share of the government's costs to sue or prosecute her, without offending the American Rule. While the result is more drastic here, the principle is the same.

Therefore, the court grants the TTO's request for declaratory relief with respect to the pro rata expense claim covering Fiscal Years 2013 through 2019. The Treasurer is authorized to debit \$764,789.33 from LT's fund balance. With regard to pre-judgment interest, the court finds that the TTO has not offered evidence of unreasonable and vexatious delay and that the sums due and owing do not otherwise qualify under the statute concerning pre-judgment interest.

C.

Audit Claim

1.

Additional Background

By statute, the TTO and each member district are required to perform audits annually. School Code section 105 ILCS 5/3-7 makes each district responsible for its own audit. Nevertheless, from at least Fiscal Year 1993 through Fiscal Year 2012, the TTO paid the costs of LT's audits. The TTO claims that Healy decided unilaterally to make these payments, that he had no authority to do so, and that the payments were prohibited by the statute. The TTO seeks a declaration that it be permitted to deduct those costs from LT's fund balance.

LT argues that the TTO agreed to pay these costs, that it did so to placate LT and keep it from leaving the TTO, and that the payments were authorized by the Trustees. LT argues that its audit costs were greater than the other districts because LT performed much of its accounting in-house. It also argues that the TTO also paid at least some, if not all, audit expenses for other districts.

There is conflicting evidence as to how the TTO handled the audits of the other districts. On August 27, 1992, Healy wrote a lengthy letter to LT's business manager Leon Eich, "as a fol-

low-up to our recent discussion regarding [LT's] possible return to using the [TTO] for various business services." TTO Ex. 5 p. 1. In the letter, Healy argues that the "first and foremost" reason why "such a change would be beneficial" to LT was "the bottom line: [LT] stands both to save money and to get a greater return on money it is already spending." *Id.* Later in the letter, Healy wrote:

Another cost saving feature that results from this change is that this office would assume the cost of your audit, with the exception of your imprest and cafeteria accounts. The cost savings would be substantial.

Id. p.3. The TTO Trustees were blind copied on this letter.

On April 29, 1994, Healy wrote a letter to Beckwith, which stated as follows:

Annual Audit. The trustees *hire and pay for the audit of the school districts* and the Treasurer's office in Lyons Township. This office has assumed the cost of [LT's] audit, *even though* the functions were in house.

The TTO Trustees were copied on the letter. In January 2001, Healy wrote Dennis Kelly, then LT's superintendent, as follows:

Annual Audit. The trustees hire and pay for the audit of the school districts and the Treasurer's office in Lyons Township.

At trial, Healy and Hartigan recalled that the TTO paid for the audits of other districts.

On the other hand, the TTO introduced evidence that other districts paid their own auditing costs. This evidence was inconclusive, because, in part, back-up invoices were not available and the court could not determine whether audit costs billed and recorded as TTO expenses also included audit costs of the districts. The passage of time, the faded recollection of witnesses, and the incompleteness and unreliability of TTO records make it very difficult for the court to determine when and to what extent, the TTO paid for the audits of other districts. Nevertheless, the court's analysis does not turn on whether or not the TTO paid audit costs of other districts.

2.

Analysis

The court considers two differences between the facts underlying the audit claim and those underlying the accounting credit claim. First, while Healy's agreement to pay LT's audit expenses is documented and was offered as an incentive to re-integrate LT into the TTO's system, there is no evidence of a specific proposal or vote by the Trustees on the TTO's assumption of LT's audit fees. The court does not find this fact to be significant, however, because, as with the accounting credits, the Trustees were required to and did affirmatively approve each payment by the TTO of LT's audit expenses.

Second, unlike the issuance of credits for accounting work, the TTO lacked statutory authority to pay LT's, or any other district's audit expenses. As discussed above, the court finds that the TTO had the authority to engage contractors to help perform its statutory duties, and that when the TTO issued credits to LT in exchange for accounting services, it was acting within that authority. No such authority exists, however, for the payment of district audit fees. The statute makes each district responsible for its own audit. When the TTO paid district audit fees, the TTO was not paying for a service the TTO was otherwise obligated to perform.

An *ultra vires* act of a governmental entity is void *ab initio*. *Matthews*, 2016 IL 117638 at ¶ 98 (“a municipal corporation cannot be obligated under a contract implied in fact that is *ultra vires*, contrary to statutes, or contrary to public policy”). Nevertheless, a governmental entity may be estopped to deny an *ultra vires* act, “when [the opposing party's] action was induced by the conduct of municipal officers, and where in the absence of such relief he would suffer a substantial loss and the municipality would be permitted to stultify itself by retracting what its agents had done.” *Chi. Food Mgmt., Inc. v. City of Chicago*, 163 Ill. App. 3d 638, 645-46 (1st Dist. 1987) (quoting *Cities Serv. Oil Co. v. City of Des Plaines*, 21 Ill. 2d 157, 160-161 (1961)).

As with the accounting credits claim, the court finds that the TTO is estopped to reverse its prior action. First, as discussed above, the usual policy concerns relating to the use of estoppel against a governmental body are not as compelling where both parties are governmental entities adverse to one another. Second, the traditional prerequisites for application of

estoppel to a governmental entity are present here. In the ordinary discharge of the Trustees explicit statutory duties, they were aware of and did authorize payments to the auditors for LT and other districts. LT relied on the TTO's audit payments: first, it acceded to the TTO's choice of auditors, even though these auditors were more expensive than others LT might, and, later did, choose. Second, the TTO's payment of LT's audit expenses were an additional incentive for LT to remain within the TTO system. In fact, when the TTO stopped crediting LT for accounting services and stopped paying for LT's audit, LT hired new, less expensive, auditors, and took steps to obtain legislative authority to leave the TTO.

Therefore, and based on the same analysis as the court articulated with respect to the accounting credits claim, the court denies the TTO's request for declaratory relief as to the audit claim.

D.
Investment Earnings Claim

1.
Background

As discussed above, the statutory scheme requires the TTO to collect, hold, pool for investment purposes and invest the money of the member school districts; however the TTO is required to separately account for the funds of each member district. Like expenses, investment income must be allocated to the member districts based on the ratio of the district's funds to total funds held by the TTO at the time of allocation. The TTO must keep separate books of account for the member districts reflecting all receipts, expenses, allocated investment income and fund balances. The TTO must maintain an account balance for each member district, including the district's balance in the pooled funds. Again, the TTO is not permitted to make any payments or issue any such checks for the expenditure of district funds without express authority from the issuing district.

The TTO claims that in the period running from Fiscal Years 1995 through 2012, LT was allocated more income from the pooled investments than its proportionate share of distributions actually made. The TTO asks the court for permission to reverse quarterly or annual interest allocation to LT that exceeded LT's proportionate share during the respective quarter or year.

LT argues that, because of an absence of records, the TTO has no evidence of actual investment earnings in any particular quarter or year and, in general. Therefore, LT argues, the TTO cannot and does not know how much investment income was earned by and should have been credited to LT in any particular quarter or year. Absent such knowledge, LT argues, there is no evidence to support an over-allocation claim. LT also argues that the TTO's method of computing the over-allocation is flawed, and therefore unreliable, for a number of reasons, including mathematical errors by Healy and the TTO's expert and the failure to examine and account for over-allocations to other districts. LT argues that when Healy's defalcation was uncovered, LT requested that the TTO conduct a complete forensic audit to determine the amount of money stolen and examine the allocation of investment earnings, but the TTO declined to do so. Instead, for purposes of this lawsuit, the TTO hired an expert to examine allocations to LT only during a limited period of time.

At trial, LT moved for a direct verdict on this claim. The court denied the motion but expressed reservations about the TTO's methodology for computing the claim. Subsequently the TTO moved to voluntarily dismiss the claim. The court denied this motion, believing it was inadvisable to allow a party to voluntarily dismiss a claim after closing its case hearing the court's reservations about the merits of the claim. At closing argument, the TTO abandoned its claim, essentially conceding that its method of computing over-allocations was flawed.

Nevertheless, the court is faced with a live claim which the parties litigated at great expense for approximately eight years. Therefore, the court offers the following analysis and ruling.

2.

Analysis

It cannot be disputed that analysis of the TTO's claim is hampered by an absence of source documents. The TTO concedes that there is no way to know precisely how much investment income was earned in any year during the Healey era and therefore precisely how much income should have been allocated to each member district. Therefore, the TTO relied on certain handwritten notes created by Healy and on its general ledger, which reflects amounts actually credited to the member

districts, even though these amounts cannot be tied to actual investment income.

Healy's notes appear to be prepared on a quarterly basis. They appear to reflect his estimates of investment income for the respective quarter, his estimate of each district's then-current pro rata share of the fund, and his estimate of the proper allocation based on those numbers. These notes also reflect additional allocations to LT and other districts which are seemingly random and are unrelated to the computation of the pro rata share of investment income, even according to Healy's numbers. The notes also contain other entries which are often incomprehensible. The notes are not tied to any underlying documents and the TTO did not connect them with brokerage statements. Healy recognized his notes and testified generally as to how he used them, but could not recall or explain individual entries.

The TTO's analysis compared Healy's estimate of LT's pro rata investment earnings for each quarter against the amount actually credited to LT per the general ledger. To the extent the general ledger reflected an amount which exceeded or fell short of Healy's estimate, the TTO allocated a debit or credit to LT. The TTO did not do this analysis for the other districts; its expert testified he spot checked other districts and concluded that over and under payments for other districts would be *de minimus*. Further, the TTO's analysis began in fiscal year 1995 and ended in fiscal year 2012. It did not consider allocations or adjustments which may have been made after 2012.

The TTO's analysis was fatally flawed. First, leaving aside the absence of any documentation establishing actual investment earnings for each quarter and year, the TTO's general ledger reflects investment income actually allocated to the districts. Therefore, in each quarter and for each year, the general ledger would also reflect the amount of investment income **actually** allocated to each other district and to the districts as a whole. Therefore, there is no reason to compare the general ledger allocation for LT to Healy's notes. The better and only comparison that matters is the general ledger allocation for LT versus the entire amount of investment income allocated to all of the districts.

Because the TTO is audited annually, the general ledger should tie to actual fund balances. Of course, that assumption is undercut by the fact that the auditors failed to catch Healy's

embezzlement. Nevertheless, the evidence was that Healy embezzled funds before they hit the TTO's books, so the allocations, account balances and total fund balance shown on the TTO's book reflect reliable actual balances even if those balances are significantly lower than they should have been due to the embezzlement. In any event, comparing general ledger allocations to Healy's notes is neither appropriate nor reliable and proves nothing.

Second, the failure to examine all of the allocations to all of the districts is fatal. The allocation of investment income is completely dependent on (a) total income and (b) pro rata share. Because each district receives a pro rata share of investment income, any analysis of under or over allocation for a particular district must consider what the other districts received. The testimony of the TTO's expert that he could compute over allocations to LT without reference to the allocations to other districts not credible. His testimony that minimal random spot checks were sufficient to verify that reference to the allocations to the other districts would not change the result was not credible.

Third, the TTO's analysis failed to reflect the impact each fund balance adjustment would have on future allocations. If a particular district's fund balance changes at a point in time, then the pro rata share of that district and every other district at that point in time also changes. That change then affects future income allocations. Failing to account for the impact each fund balance adjustment would have on future allocations means the TTO's analysis is inherently inaccurate.

Fourth, the TTO's analysis ended in 2012 even though the investment pool continues to this day and investment earning allocations continued. There was no reliable evidence that income was properly allocated after 2012. There was no testimony as to how adjusting fund balances before 2013 would have affected subsequent allocations.

Further, the court notes that despite LT's request, the TTO unilaterally chose not to perform a forensic audit after Healy's embezzlement was discovered. The inadequacy of the evidence is directly related to the TTO's failure to maintain appropriate records and its failure to engage a forensic auditor to examine its books. No doubt such an examination would have been expensive, but not in comparison with the amounts spent on this litigation.

Finally, the TTO has a fiduciary duty to all of its member districts, including LT. That duty requires the TTO to treat all of its member districts even-handedly. That the TTO has an unrelated dispute with LT is not an excuse to audit the investment earnings allocated to LT without performing a similar examination of the other member districts. There was no evidence to suggest Healy deliberately treated LT differently than other districts.

For all these reasons, the court concludes that the TTO has not proved any particular amount of investment earnings was over-allocated to LT and therefore denies the TTO's request for declaratory relief as to this claim.

III.

LT's Affirmative Defenses

Although unnecessary to a resolution of the TTO's claims, in the interests of judicial economy, the court considers LT's affirmative defenses.

A.

Statute of Limitations

"As a general rule, the statute of limitations will not apply to bar a claim by a governmental entity acting in a public capacity. However, where the entity is acting in a private capacity, its claim may be subject to a limitations defense." *Champaign Cnty. Forest Pres. Dist. v. King*, 291 Ill. App. 3d 197, 200 (4th Dist. 1997) (citing *Bd. of Educ. v. A, C & S, Inc.*, 131 Ill. 2d 428, 472-76 (1989) and *Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457, 464-66 (1983)). *Champaign County* articulates the following test to determine whether, in any given case, the statute of limitations defense applies to a governmental entity:

In order to determine if a governmental activity is public or private, courts should consider who would benefit by the government's action and who would lose by its inaction. Three factors must be addressed: (1) the effect of the interest on the public, (2) the obligation of the governmental unit to act on behalf of the public, and (3) the extent to which the expenditure of public revenues is necessitated.

291 Ill. App. 3d at 200 (citing *A, C & S*, 131 Ill. 2d at 476 and *Shelbyville*, 96 Ill. 2d at 464-65). This test is based on "the

policy judgment that the public should not suffer as a result of the negligence of its officers and agents in failing to promptly assert causes of action which belong to the public.” *A, C & S*, 131 Ill. 2d at 472.

In *Champaign County*, a forest preserve district filed an action for breach of fiduciary duty and breach of agency against its insurer. The district complained that the insurer overcharged for premiums and failed to disclose that comparable coverage was available at a lower cost. The trial court denied the insurer’s motion to dismiss on statute of limitations grounds but certified the following two questions under Supreme Court rule 308:

1. Did the Plaintiff act in its public capacity by purchasing liability insurance?
2. Is the Plaintiff asserting a public right in claiming excessive billing in the approximate amount of \$20,000 per year for insurance thus enjoying immunization from limitation defenses?

Champaign Cnty., 291 Ill. App. 3d.at 199. The court answered both questions in the negative, and stated:

Unlike the governmental activities in *Shelbyville* and *A, C & S*, plaintiff’s purchase of liability insurance in this case had no effect on the public at large. It did not make the public safer, nor did it reduce the likelihood of injury on plaintiff’s property. The insurance was acquired solely for the benefit of plaintiff, not the general public.

Id. at 201.

In *Shelbyville*, a municipality filed suit against a builder to recover money spent to complete and repair streets that the builder failed to construct, although required to do so under an annexation agreement. The Illinois Supreme Court found that construction and maintenance of city streets directly affected the safety of the general public and, hence, the city was acting in its public capacity. As a result, the municipality was immune from the builder’s statute of limitations defense. The court stated:

We disagree with the position advanced by the defendant. It is apparent that the safety of all persons who have occasion to use the streets at issue

here will depend on the workmanlike construction and maintenance of these streets. Insofar as it is the continuing responsibility of cities to ensure such construction and maintenance for the use of the public, the inability of the city of Shelbyville to enforce its annexation agreement or compel payment by the defendant will affect the city's finances and may impair its ability to build or oversee the construction or maintenance of streets within its jurisdiction in the future.

Shelbyville, 96 Ill. 2d at 464.

In *A, C & S*, a board of education sued suppliers of asbestos seeking to recover cleanup costs. The trial court dismissed the board's claims as time-barred, but the appeals court held that plaintiffs were immune from various limitations periods while asserting a public right. The Illinois Supreme Court affirmed the appellate court, holding that viable claims were not time-barred. The court focused on the health and safety concerns which would arise in the absence of abatement:

Though property damage is alleged, for the purposes of this issue, we cannot ignore the resulting health concerns involved, and at trial the plaintiffs will have an opportunity to establish that the levels of asbestos in the buildings can cause personal injury. The complaint also alleges a costly program is underway to repair, replace and maintain the ACMs. This complaint has alleged, therefore, an interest in the safety of these public buildings and in the safety of a large segment of this State's population which attends the public schools and for the children who will in the future attend these schools. There is also the interest of the parents, faculty, staff and other people who use or will use our public school system. Moreover, unlike "any other property owner," these buildings are owned by the government, maintained with tax revenue, and used for mandatory classroom attendance as well as for other public functions.

A, C & S, 131 Ill. 2d 428, 473-74.

Closer to this case is *Sch. Dirs. of Dist. No. 5 v. Sch. Dirs. of Dist. No. 1*, 105 Ill. 653 (1883). There a school district alleged

that a township treasurer had mistakenly diverted the taxes paid in the plaintiff district to the second district for four consecutive years. The first district argued that the second district had not made any tax levy on any property in its district and that it carried on its schools out of the funds collected from taxes levied by the first district. The court found the dispute did not affect the public interest and that the statute of limitations barred the action.

People v. Oran, 121 Ill. 650 (1887) is similar. There, one town sued another seeking a contribution towards bond indebtedness. Ten years before suit was filed, county officials ordered six sections of land detached from the plaintiff town and attached to the defendant town. At the time the county issued this order, the plaintiff town had a bond indebtedness, which the people of the six detached sections had participated in making. As a result, the plaintiff detaching town claimed it was entitled to a contribution toward the bond indebtedness from the attaching town. The trial court dismissed based on the statute of limitations and the Illinois Supreme Court affirmed. The Court stated:

No public rights are involved in this case, – the controversy relates solely to two townships. The real question is, [sic] whether the town of Atlanta shall recover money from the town of Oran. This matter does not concern the State or the people of the State. We fail to see how the public can be interested in this transaction to any greater extent than they would be in an action which one citizen might bring against another to recover money claimed to be due on a contract. The public will neither money claimed to be due on a contract [sic]. The public will neither lose nor gain if the town of Atlanta is required to pay all of its. [sic] indebtedness, nor will it affect the public if the town of Oran is required to contribute. No public interest being involved, the Statute of Limitations might properly be pleaded.

Id. at 655-56.

As in *Sch. Dirs. of Dist. No. 5* and *Oran*, the dispute here involves the correct allocation of funds between governmental entities. Unlike *Shelbyville* and *A, C & S*, here “[p]laintiff’s suit will have no effect on the general public, as it will neither

‘make the public safer, nor [will] it reduce the likelihood of injury on plaintiffs property.’” *Village of DePue v. Viacom Int’l, Inc.*, 713 F. Supp. 2d 774, 782 (C.D. Ill. 2010) (citing *Champaign Cnty.*, 291 Ill. App. 3d at 201). “[L]ost potential tax and business revenues, in and of themselves, are not damages that are part of a ‘public’ cause of action, as they do not implicate the public’s interest in health and safety, and merely affect the economic interests of the residents of the Village.” *Id.* “The fact that the residents of a particular municipality would benefit from the action is not alone sufficient to render it ‘public’ in nature; the right must belong ‘to the general public,’ rather than ‘only to the government or some small, distinct subsection of the public at large.’” *Id.* at 781 (quoting *Champaign Cnty.*, 291 Ill. App. 3d at 203). “[P]ublic rights or uses are those in which the public has an interest in common with the people of such municipality, whereas private rights or uses are those which the inhabitants of a local district enjoy exclusively, and the public has no interest therein.” *Savoie v. Bourbonnais*, 339 Ill. App. 551, 558 (2nd Dist. 1950).

To the extent plaintiff argues that its claim effects education and education is in the public interest, that argument also fails. Here, the TTO is not engaged in educating students, only in collecting, holding, investing and accounting for money. *See, DePue*, 713 F. Supp. 2d at 782 (“recovery by Plaintiff of the ‘cost of remediating Lake DePue of its heavy metal contaminants’ will not improve public health and safety, as Plaintiff has not, and cannot, undertake this task itself.”) Here the controversy is simply how funds will be allocated among several governmental entities. Finally, looking to the policy behind excepting certain governmental lawsuits from the statutes of limitations defense, there is no danger here that the public will “suffer as a result of the negligence of its officers and agents in failing to promptly assert causes of action which belong to the public.” *A, C & S*, 131 Ill. 2d at 472. What happens in this case will advantage the students and taxpayers in certain school districts over others. There is no general public interest in which of those groups prevails.

Finally, the TTO argues that the funds at issue were trust funds and therefore the statute of limitations does not apply. LT argues that the districts’ funds are held in agency accounts, not trust accounts; that the Treasurer is an agent or custodian for the funds, not a Trustee; and therefore the trust exception to the statute of limitations does not apply.

The court agrees with LT; the funds at issue are not trust funds. All tax revenues for the participating districts are deposited with the TTO. By statute, the TTO must distribute those funds to the districts as determined by the taxing authorities and strictly account for each district's fund balance. 105 ILCS 5/8-7. While the TTO is permitted to, and does, pool funds for investment purposes, each district has a specific fund balance and operating funds for each are held in a separate agency account or accounts. The TTO is not entrusted with the use of those funds; to the contrary, the TTO may not use or spend a district's funds without express authorization of that district.

In *Sch. Dirs. of Dist. No. 5*, the court stated as follows:

Money belonging to a school district while in the hands of the township treasurer is a trust fund, but when he pays it out to the directors of another district, on their orders, by mistake, without fraud or collusion, or notice to the recipients that it belonged to another district, it cannot be held to be a trust fund in their hands which will exclude the operation of the Statute of Limitations.

105 Ill. at 655. Once the TTO allocates funds to a district, it has effectively paid those funds to the district within the meaning of *Sch. Dirs. of Dist. No. 5*. At that point, by statute, the Treasurer has no authority to disburse funds for the benefit of the district, as a trustee would do. *See* 105 ILCS 5/8-16. Instead, the Treasurer simply holds the funds as an agent or custodian and disburses them only in accordance with the specific direction of the district. *Id.* Simply by filing this lawsuit, the TTO concedes this point. The TTO seeks declaratory relief from the court because it recognizes that it cannot debit LT's fund balance without LT's permission.

The court finds that, with respect to allocated funds, section 5/8-16 of the School Code is fundamentally inconsistent with a trustee-beneficiary relationship. School district funds are held in agency accounts, which are custodial accounts, not trust accounts. The distinction between trust accounts and custodial accounts is well-established. *See Tucker v. Soy Capital Bank & Trust Co.*, 2012 IL App (1st) 103303 and *Waller v. Davis (In re Estate of Davis)*, 225 Ill. App. 3d 998 (2nd Dist. 1992).

The court finds that none of the TTO's claims fall within the public rights or trust fund exceptions to the statute of limitations. The TTO brings its claims under the School Code. The statute of limitations applicable to the TTO's claims is five years pursuant to 735 ILCS 5/13-205 which governs "all civil actions not otherwise provided for". See *Keller v. Boatman's Bank*, 186 Ill. App. 3d 448, 452 (4th Dist. 1989) (quoting *Lyon v. Morgan Cnty.*, 313 Ill. App. 296, 298 (3rd Dist. 1942). (where liability results from a statute, an action to enforce such liability is a 'civil action not otherwise provided for' within the meaning of section 15 of the Limitations Act, and is therefore governed by the five year statute of limitations"); *Gibraltar Ins. Co. v. Varkalis*, 115 Ill. App. 2d 130, 137 (1st Dist. 1969) (declaratory judgment action was a statutory action within the meaning of the phrase "civil action not otherwise provided for" in limitations provision).

The TTO filed this lawsuit on October 16, 2013. Therefore, as to any payment made on LT's behalf for audit expenses, any credit issued to LT for accounting related services, and any credit issued to LT for investment earnings on or before October 16, 2008, the TTO's claim, even if otherwise viable, is barred by the statute of limitations. With respect to credits, reimbursements and allocations, the key date is the date of the general ledger entry.

To the extent LT cites *Reimers v. Honda Motor Co.*, 150 Ill. App. 3d 840, 843-44 (1st Dist. 1986) for the proposition that, as to the audit claim, the statute should run from the date the expense was incurred, the court disagrees. *Reimers* involved parents' derivative claim for medical expenses arising out of an auto accident involving their child. The court held that the two-year statute of limitations applicable to the child's injury claim was also applicable to the parents Family Expense Act claim. In a personal injury action, the two-year statute of limitations begins to run from the date of injury, regardless of when medical expenses are incurred. A new cause of action does not arise each time new medical expenses are incurred.

In this case, however, the injury does not occur when the auditor preforms services or issues a bill for services truly rendered. No harm arises from the service or the bill. Instead, the injury arises when the TTO pays an expense that should have been paid by LT. Therefore, with respect to the audit claim, for each allegedly wrongful payment, the statute of limitations runs from the date the TTO paid the disputed bill.

See Feltmeier v. Feltmeier, 207 Ill. 2d 263, 279 (2003) (the statute begins to run on the date the defendant invaded the plaintiff's interest and inflicted injury, and this is so despite the continuing nature of the injury).

B.

Laches

LT also asserts *laches* as an affirmative defense. With limited exceptions, *laches* is an equitable defense which does not apply to actions at law. *Gen. Auto Serv. Station, LLC v. Garrett*, 2016 IL App (1st) 151924, ¶¶17-18. Ordinarily, *laches* is inapplicable where a statute of limitations applies. Here, the court has already determined that five-year limitations period set forth in Limitations Act section 13-205 applies, and LT does not argue that *laches* should be applied to shorten that period. Therefore, the only possible application of the doctrine in this case is if the court had held that the public rights or trust fund doctrine barred application of the statute of limitations. Because the court applied the statute of limitations, it need not consider *laches*.

Nevertheless, again, in the interests of judicial economy, the court considers whether *laches* would bar any of the TTO's claims, if the statute of limitations did not apply. In analyzing this question, the threshold issue is whether *laches* may be applied where an otherwise applicable statute of limitations defense is barred because the plaintiff is a public entity or the funds involved are trust funds. Neither party addresses this question. The court finds, however, that it would be appropriate for the court to consider a *laches* defense under those circumstances. *See Tolbert v. Godinez*, 2020 IL App (4th) 180587, ¶24 (*laches* may apply where the statute of limitations is equitably tolled). The court does not believe that the public interest or trust fund exceptions to the statute of limitations mean that a governmental entity could bring an action regardless of the length of delay or the prejudice to the adverse party resulting from the delay. In the absence of a statute of limitations, the court must still consider equitable and due process principles in determining whether the claim is timely made.

“The two fundamental elements of *laches* are lack of due diligence by the party asserting the claim and prejudice to the opposing party.” *Van Milligan v. Bd. of Fire & Police Comm'rs*, 158 Ill. 2d 85, 89 (1994) (citing *Tully v. State of Illinois*, 143 Ill. 2d 425, 432 (1991)). “There is considerable reluctance to impose

the doctrine of *laches* to the actions of public entities unless unusual or extraordinary circumstances are shown.” *Id.* at 90. “This is so because *laches* ‘may impair the functioning of the [governmental body] in the discharge of its government functions, and * * * valuable public interests may be jeopardized or lost by the negligence, mistakes, or inattention of public officials.’” *Id.* at 90-91 (quoting *Hickey v. Ill. Cent. R.R. Co.*, 35 Ill. 2d 427, 447-48 (1966)). “Although ‘the reluctance to apply equitable principles * * * does not amount to absolute immunity * * * from *laches* and estoppel under all circumstances,’ it has been recognized that *laches* does not apply to the exercise of governmental powers except under ‘compelling circumstances.’” *Id.* (quoting *Hickey*, 35 Ill. 2d at 448).

The court finds that those compelling circumstances exist with respect to the TTO’s claims. First, some of the TTO’s claims are more than twenty years old. The TTO’s audit claim dates back to 1993, its investment earnings claim dates back to 1995, and its accounting credits claim dates back to 2000. Relevant events began more than 30 years ago. As to all of the claims, there is concrete evidence of missing documents, dead witnesses and faded and untrustworthy memories. Key factual issues relating to all three claims are obscured by time. LT has demonstrated actual prejudice in defending all three claims due to the absence of evidence.

Second, LT demonstrated that the TTO did not act with diligence. As the court has repeatedly discussed, the TTO Trustees had an affirmative duty to inform themselves about and approve all of the reports and expenses of the Treasurer’s office. It is inconceivable that the TTO Trustees were unaware of the credits to LT for accounting services and the payment of LT audits. The evidence strongly suggests and the court finds that the Trustees had actual knowledge in real time. But, in view of their statutory duties, if the Trustees did not have actual knowledge, then, as a matter of law, they were not diligent. *See Trs. of Schs. v. Am. Sur. Co.*, 307 Ill. App. 398, 408 (2nd Dist. 1940) (lack of knowledge of the true state of treasurer’s is due to trustees’ failure to exercise the degree of diligence imposed on them by law).

That new Trustees may have acted with reasonable alacrity when they learned about the actions or inactions of previous Trustees does not excuse former Trustees. The court looks not to the actions of individual Trustees, but to the actions of the TTO and Trustees as a continuing entity. As to the investment

earnings credits, the court finds that the Trustees lacked diligence when they failed to conduct a forensic audit after learning of Healy's defalcation and the possibility of over-allocations.

"Although statutes of limitation, applicable in legal actions, are not directly controlling in suits seeking equitable relief, courts ordinarily follow statutes of limitation as convenient measures for determining the length of time that ought to operate as a bar to an equitable cause of action." *Sundance Homes v. County of Du Page*, 195 Ill. 2d 257, 270 (2001); *see also Am. Sur. Co.*, 307 Ill. App. at 406 ("as a general rule, equity follows the law and will adopt by analogy the same period of time fixed by the statute."). Here, the court would look to the applicable statute of limitations to fix the length of time that would bar these claims. If that statute were not applicable, the court finds that *laches* would bar the TTO's claims, even if otherwise viable, as to any payment made on LT's behalf for audit expenses, any credit issued to LT for accounting related services, and any credit issued to LT for investment earnings on or before October 16, 2008.

C.

Voluntary Payment Doctrine

"Under 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, misrepresentation, or mistake of fact, money voluntarily paid under a claim of right to the payment, with full knowledge of the facts by the person making the payment, cannot be recovered unless the payment was made under circumstances amounting to compulsion." *Jenkins v Concorde Acceptance Corp.*, 345 Ill. App. 3d 669, 674-675 (1st Dist. 2003) (internal citations omitted). LT argues that the voluntary payment doctrine bars the TTO's attempts to reverse the accounting credits issued to LT, to debit LT for payments made to the auditors and to reverse investment income credits given to LT.

The TTO first argues that the voluntary payment doctrine is a form of estoppel and that estoppel "will not be applied to governmental entities absent extraordinary and compelling circumstances." *Matthews*, 2016 IL 117638, ¶ 94. For the reasons stated above, the court finds no bar to the application of estoppel principles in this case. To the extent that the TTO

argues that estoppel may not be applied against the unauthorized acts of a public official, the court finds that none of the claims asserted here involve unauthorized activity by Healy or the TTO.

The TTO next argues that the doctrine is inapplicable here because LT did not receive any “payment” under a “claim of right.” The court disagrees. In the context of the statutory relationship between these parties, the issuance of credits to the LT, as memorialized in the general ledger, are “payments” within the meaning of the voluntary payment doctrine. As is discussed above, the fund balances held by the TTO belong to the districts and may not be spent without approval of the district. A credit against LT’s pro rata expense payment is equivalent to a payment by the TTO in the amount of the credit. A payment to the auditor by the TTO on behalf of LT is a payment. In other contexts, courts have held that the voluntary payment “rule is applicable to payments made to an intermediary.” *Freund v. Avis Rent-A-Car Sys., Inc.*, 114 Ill. 2d 73, 79 (1986).

Further, the payments were made under “claim of right” by LT. LT claimed it had an arrangement with the TTO that afforded LT the right to the credits for the accounting services and audit payments. LT claimed a right to an allocation of investment earnings. Whether these rights were enforceable is not determinative. In every case in which a party seeks to invoke the voluntary payment doctrine, the opposing party claims that there was no actual right to the payments.

Finally, the TTO argues that the Trustees, had, at best, incomplete knowledge of the payments at issue. Application of the voluntary payment doctrine requires “full knowledge of the underlying facts.” *Ill. Graphics Co. v. Nickum*, 159 Ill. 2d 469, 491 (1994). “A recognized exception to this long-standing rule provides that where money is paid under a mistake of fact, which would not have been paid had the facts been known to the payor, such money may be recovered.” *Id.*

As to the accounting credits and payments to auditors, for the reasons discussed above, the court finds that the TTO, including the Trustees, had full knowledge of the relevant facts and circumstances when the credits were issued and payments made. Therefore, if those claims were otherwise viable, and not barred by the statute of limitations or laches, they would be barred by the voluntary payment doctrine.

As to the investment earnings claim, LT did not meet its burden of proving complete knowledge. While the TTO and Trustees knew of the allocations to LT, there is no evidence that anyone knew that investment earnings were over allocated or by how much. Therefore, if the investment earnings claim were viable and not otherwise barred, it would not be barred by the voluntary payment doctrine.

IV.

LT's Counterclaim

LT asserts a counterclaim asserting that the TTO owes LT a fiduciary duty which the TTO breached in the following four instances:

1. Failing to credit LT and the other districts for insurance proceeds recovered on Healy's fidelity bonds;
2. Failing to credit LT and the other districts with the full amount of investment earnings;
3. Permitting West 40 Intermediate Service Center #2 (West 40) to operate at a deficit and then guaranteeing a bank loan to it;
4. Incurring legal fees in this case that are so large and excessive that they constitute a breach of the TTO's fiduciary duties.

As a preliminary matter, the TTO owes statutory duties and a fiduciary duty to all of the districts. In general, the court finds that the TTO's fiduciary duty requires that, in exercising its statutory duties, the TTO must treat the member districts even-handedly and may not further its own interests at the expense of the districts' interests.

A.

Background as to Insurance Proceeds and Investment Earnings Counterclaims

As is discussed above, for cash flow purposes, the TTO maintains operating accounts for the member district against which, at the direction of and with the approval of the respective district, checks are written for the payment of bills. The remainder of the districts' funds are pooled in an investment account, which is made up of sub-accounts for the various investments. As to the pooled funds, each district has a precise account balance. Quarterly, each district is credited for its share of pro rata earnings. Annually, final adjustments to

account balances are made based on the audit. As necessary, a district's pooled money is transferred to an operating account to meet cash flow needs. The TTO maintains its own account to pay its own expenses. That account is funded through the pro rata payments of the member districts for TTO expenses.

Not all investment income is allocated quarterly to the districts. "Best practices" requires the TTO to hold a balance of unallocated income to account for market fluctuations and errors in allocation. These unallocated balances belong to the districts in amounts equal to their respective pro rata shares, but have not been formally credited to the districts on the TTO's books and records. The unallocated fund balance is invested and earns interest for the districts. The amount of unallocated funds balance fluctuates, but it does not grow over time.

B.

LT's Claims

1.

Healy Insurance Proceeds

There is no evidence that the TTO made any inappropriate use of the Healy insurance proceeds. The proceeds were deposited into bank accounts associated with the TTO. To the extent that the insurance proceeds were not immediately credited to the districts but deposited into the TTO's operating account and used for TTO expenses, these funds would have belonged to the districts in proportion to their pro rata share and therefore would have been applied to TTO expenses in accordance with each district's pro rata share. There is no evidence that the TTO made any undisclosed use of the Healy insurance proceeds. Other than the expenses about which LT complains and are addressed in connection with the TTO's claims for post-2012 expenses, there was no suggestion of inappropriate or unauthorized expenses by the TTO. LT made no closing argument in support of this counterclaim. The court finds no evidence that the TTO's handling of the insurance proceeds was inappropriate or caused LT any damage.

2.

Failure to Credit All Investment Earnings

Again, LT made no closing argument with respect to this claim. The court finds that the TTO's practice of maintaining an unallocated investment earnings balance – which balance is

reflected on its books and records – does not violate any statutory or fiduciary duty and does not cause any damage to LT.

3.

Providing Collateral for West 40's Loan

West 40 is a governmental agency that provides certain services to TTO member school districts. Among the services provided, West 40 runs a safe school, which provides a learning environment for certain at-risk students. West 40 is funded by government grants, not tax dollars. Through no fault of West 40 and as a result of funding delays at the state level, West 40 had significant financial problems and ran a significant deficit in its TTO account. In 2018, the TTO organized and participated in arranging a bank loan for West 40. A local bank agreed to make a \$2.5 million dollar loan to West 40. A condition of the loan was that the TTO would post collateral consisting of \$2.5 million in certificates of deposit. The CDs were funded using money from the pooled investments held by the TTO.

There was nothing corrupt about the transaction. To the contrary, the loan benefited West 40, which, in turn, benefited all of the other school districts. For example, the loan allowed West 40 to continue to operate the safe school for the benefit of the districts' students, including LT's students. Since the State owed West 40 money sufficient to cover the loan and interest, the risk of default was miniscule. While posted, the CD's earned interest for the fund balance. Nevertheless, citing School Code provisions 5/8-1 through 8/20, LT argues that the TTO exceeded its authority in posting the collateral.

The court agrees. Nothing in the School Code authorizes the TTO to use the funds of the districts to collateralize a loan to any of the member districts or anyone else. In its pre-trial brief, LT argued that it is entitled to recover the difference between what its funds earned while pledged as collateral for the loan and what those funds would have been expected to earn as an average part of the TTO's investment portfolio. LT also indicated that it "will be satisfied with a nominal damages award." LT's Trial Brief p.65. At trial, there was no evidence that, but for the loan, the CD funds would have been allocated to a different, more productive, investment as part of the investment strategy for the entire portfolio. There was no evidence that the CDs earned less interest than the pooled investment fund as a whole. There was no evidence from which the court could conclude that LT suffered any concrete damage,

let alone that would permit the court to calculate that damage. Absent proof of actual damages, the court cannot award actual damages.

Nominal damages may be awarded when a party proves that it has suffered actual damages, but fails to produce proper evidence as to the amount. *Brewer v. Custom Builders Corp.* 42 Ill. App. 3d 658, 678 (5th Dist. 1976). Here, there is no evidence of actual damages. In any event, an award of nominal damages is within the court's discretion. See *Chi. Title Land Trust Co. v. JS II, LLC*, 2012 IL App (1st) 063420, ¶ 75. This court declines to award nominal damages.

* * * *

Based on the foregoing,

- (1) The TTO's request for declaratory relief is granted, in part, and denied in part. The Treasurer is authorized to debit \$764,789.33 from LT's Agency Fund balance for pro rata payments withheld by LT for Fiscal Years 2013 through 2019;
- (2) In all other respects, the TTO's requests for declaratory relief are denied;
- (3) The case management set for June 21, 2021 at 9:00 a.m. is stricken;
- (4) This is a final order disposing of all matters pending before the court.

ENTERED:

Jerry A. Esrig

Honorable Jerry A. Esrig
Circuit Judge, Law Division

Circuit Judge
Jerry A. Esrig

Dated: May 21, 2021

May 21, 2021

Exhibit B

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)
 4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 5 COUNTY DEPARTMENT - LAW DIVISION
 6 TOWNSHIP TRUSTEES OF)
 7 SCHOOLS TOWNSHIP 38)
 8 NORTH, RANGE 12 EAST,)
 9 Plaintiff,)
 10 vs.) Case No. 13 CH 23386
 11 LYONS TOWNSHIP SCHOOL)
 12 DISTRICT 204,)
 13 Defendant.)
 14
 15
 16 REPORT OF PROCEEDINGS at the trial
 17 of the above-entitled cause before the Honorable
 18 Jerry A. Esrig, Judge of said Court, on
 19 November 17, 2020, at the hour of 9:32 a.m.
 20
 21
 22
 23 Reported by: Jennifer D. Riemer, CSR
 24 License No.: 084-003901

1 I N D E X
 2 WITNESS PAGE
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 6 Redirect Examination by Mr. Kaltenbach.. 32
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 12 Direct Examination by Mr. Hoffman.....120
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1 APPEARANCES:
 2
 3 MILLER CANFIELD
 4 BY: MR. BARRY P. KALTENBACH
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 6 Chicago, Illinois 60606
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 17
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 19 BY: MR. JAY R. HOFFMAN
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 21 Chicago, Illinois 60602
 22 (312) 899-0899
 23 jay@hoffmanlegal.com
 24 Representing the Defendant.

1 THE COURT: Mr. Hoffman?
 2 KENNETH GETTY,
 3 called as a witness herein, having been
 4 previously duly sworn, was examined and
 5 testified as follows:
 6 CONTINUED CROSS-EXAMINATION
 7 BY MR. HOFFMAN:
 8 Q. Mr. Getty, let me find your box. There
 9 you are, sir. I'm going to pin you open.
 10 Would you be kind enough, please, to
 11 open LT A, as in apple, 14?
 12 A. I'm ready when everybody else is.
 13 Q. If you could turn to page 2 of that
 14 document, I'd appreciate it, sir.
 15 A. Okay.
 16 Q. Now, the third column from the right is
 17 what TTO says the total expenses of the TTO were
 18 for each fiscal year, correct?
 19 A. Yes, that's how it's listed.
 20 Q. All right. And for 1999 that amount
 21 was about \$634,000?
 22 A. Correct.
 23 Q. And then if you skip down to the bottom
 24 of that column, for fiscal year 2012, the amount



1 is about \$1.3 million?
 2 A. Correct.
 3 Q. Would you agree that the second number
 4 is more than double the first number?
 5 A. Correct.
 6 Q. Do you have any understanding as to why
 7 the TTO's total expenses increased by that
 8 factor during that period?
 9 A. I do not.
 10 Q. Do you have any understanding as to
 11 whether inflation played a role?
 12 A. I'm sure inflation is part of it.
 13 Q. Do you have any understanding as to
 14 whether rising salaries of TTO personnel played
 15 a role?
 16 A. I'm sure that's part of it as well.
 17 Q. All right, sir. You can close that
 18 document, never to return.
 19 A. Done.
 20 Q. Would you, sir, be kind enough to open
 21 LT Exhibit C14, please. Let me know when you've
 22 got it open.
 23 A. I'm ready when everybody else is.
 24 Q. And you recognize this as the LT Board

5

1 Q. Okay. And I know you weren't there at
 2 the time, but you've seen this memo before in
 3 the context of this case, correct?
 4 A. I have.
 5 Q. Okay. So this is from Lisa Beckwith to
 6 the LT Board of Education, June 14, 2000, and it
 7 says, "Attached is a copy of the Lyons Township
 8 Treasurer's bill for the 1999 through 2000
 9 school year. The district shares \$165,476."
 10 Do you see that?
 11 A. I do.
 12 Q. Okay. And if you scroll down one page
 13 more to page 18, do you see the May 24th, 2000
 14 bill from the TTO to LT?
 15 A. Correct. The next two pages. The next
 16 page is the letter and then second is the
 17 invoice, correct?
 18 Q. Right. Exactly. Thank you.
 19 So this is the 2000 calendar year
 20 invoice for the expenses of office for the TTO
 21 for the 1999 fiscal year, correct?
 22 A. Correct.
 23 Q. Okay. Now, let's go back up to page 17
 24 to the memo. Do you have any understanding as

7

1 minutes that are in question in this case?
 2 A. Correct.
 3 Q. Page 1 is the agenda, and then page 2
 4 are the -- I'm sorry. There's a three-page
 5 agenda, and we skip down to page 4, the actual
 6 minutes. Do you see that?
 7 A. I do.
 8 Q. All right. And would you just scroll
 9 down to page 13 of this document, sir. Do you
 10 see that?
 11 A. Almost there.
 12 Q. Okay. Take your time.
 13 A. I'm there now.
 14 Q. Okay. And you see there's a reference
 15 to Township Treasurer's invoice, Exhibit T as in
 16 Tom?
 17 A. I see that highlighted.
 18 Q. All right. Let's take a look at
 19 Exhibit T, if we could, please. And that's on
 20 page 17 of this PDF. And that's attached to the
 21 Board minutes.
 22 A. I'm sorry. What page?
 23 Q. We're on page 17, sir.
 24 A. 17. Okay. I'm there.

6

1 to what -- what fiscal year for LT the
 2 Treasurer's invoice issued in 2000 for the 1999
 3 fiscal year would fall into?
 4 A. I'm sorry. Can you rephrase that.
 5 Q. Let me try to ask that better.
 6 So in 2000 May, the Treasurer sends a
 7 bill for the prior fiscal year, correct?
 8 A. Correct.
 9 Q. Do you have any understanding in terms
 10 of the -- any payment that LT makes on that
 11 bill, what fiscal year for LT that falls into?
 12 A. So the fiscal year 2000 payment would
 13 be reflected in fiscal year 2000.
 14 Q. Right. It would be the next year,
 15 right?
 16 A. Correct.
 17 Q. Okay. So when it says here in
 18 Ms. Beckwith's memo to -- Dr. Beckwith's memo, I
 19 believe, it says, "For the bill for the 1999 to
 20 2000 school year," do you know which school year
 21 she is referring to there? Do you have any
 22 understanding?
 23 A. Yeah. I mean, the way I read it, she's
 24 saying the bill received in the fiscal year

8



1 was district 106's superintendent. Mr. Hoffman
2 designated the entirety of those depositions. I
3 designated portions of those depositions. So I
4 just want to make sure that our designation is
5 part of the trial record, as well.
6 THE COURT: Are you objecting to
7 Mr. Hoffman's designations that don't overlap
8 yours?
9 MR. KALTENBACH: Some of them, yes,
10 your Honor. And most of those are relevancy
11 objections. So if the Court's going to read it,
12 then take it for what it's worth.
13 THE COURT: But Mr. Hoffman, you're not
14 objecting to any of the plaintiff's
15 designations, correct?
16 MR. HOFFMAN: Yes, sir, that's correct.
17 THE COURT: So the plaintiff's designations
18 will be admitted. And then Mr. Hoffman, if you
19 remember at the end of your case to introduce
20 yours, and we can talk about the relevancy
21 objections then.
22 MR. HOFFMAN: I thought we might -- depending
23 on how your Honor wants to handle it, maybe if
24 we do have extra or spare or a slot of time

69

1 during the future of this trial, we could just
2 deal with those evidence objections at that
3 time. So that's -- that was my thinking on it.
4 But, of course, any way you want to handle it is
5 fine with me.
6 THE COURT: Yeah, we can do that. Okay.
7 MR. KALTENBACH: Okay. Your Honor, with that
8 housekeeping matter taken care of, plaintiff
9 rests, subject to the right, obviously, to call
10 rebuttal witnesses -- I'm sorry.
11 Subject to the right to recall
12 witnesses, your Honor, the plaintiff rests. And
13 I believe we also -- the parties -- we do -- we
14 would like to have the opportunity to file a
15 posttrial memorandum for the Court.
16 THE COURT: Well, I don't know what you mean
17 by subject to the right to recall witnesses.
18 Are you resting or not?
19 MR. KALTENBACH: We are resting, your Honor.
20 THE COURT: Okay. Mr. Hoffman?
21 MR. HOFFMAN: As to a posttrial brief, it's
22 our position that we should determine that at
23 the end of the trial. Our inclination is not to
24 spend that type of money and time, but I think

70

1 we all need to revisit that issue at the end of
2 the trial, and that's where that belongs. So I
3 won't belabor it.
4 THE COURT: When we get done with the trial,
5 I'll let you know what I think would be most
6 helpful to me.
7 MR. HOFFMAN: Exactly. And then, your Honor,
8 as we indicated, LT has a motion for directed
9 verdict -- directed finding, I think, because it
10 was only part of the case. And I'd like to
11 present that.
12 I do want to take a minute to have a
13 break for the sole purpose of communicating to
14 my first witness what our schedule is like and
15 when I anticipate calling him.
16 So we've got 11:10 now, and we're going
17 to have this argument. And I know he's
18 available, and he's in his office awaiting my
19 head's up. So I guess I just want to work out
20 the schedule so I can fill him in.
21 THE COURT: If I gave you all the time you
22 wanted, how long would it take you to present
23 your motion?
24 MR. HOFFMAN: I don't think it's going to

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1 take more than 15, 20 minutes to present. And
2 then we, of course, will get a response, and
3 then maybe have some further discussion.
4 THE COURT: Okay. So what I'm thinking is,
5 we'll hear the motion, we'll take our lunch
6 break, and then we'll resume, I'm going to
7 say -- just to be safe, let's say at 1:30.
8 MR. HOFFMAN: Perfect. I'll tell the witness
9 that, and I appreciate you being cognizant of
10 his schedule. Thank you.
11 THE COURT: Okay. So you want to take a
12 couple minutes now to get in touch with him?
13 MR. HOFFMAN: I do. Thank you. If we could
14 have five minutes, that's all I need.
15 THE COURT: Yes. Let's be back at -- let's
16 say 11:20.
17 MR. HOFFMAN: Perfect. Thank you, Judge.
18 (Whereupon, a short recess was
19 taken.)
20 MR. HOFFMAN: Your Honor, this is LT's motion
21 for a directed finding on the TTO's investment
22 earnings claim. We're bringing the motion under
23 Sections 5/2-1110.
24 we've provided the Court with several

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

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

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

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

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<p>1 discretion, there's no judgment, there's no 2 business judgment. It uses the word shall. 3 Separately, with LT, there's no joint 4 ownership of funds. There's no fractional 5 ownership of a pooled investment. It's all 6 divided completely among the pool members. 7 Individually, to us it means that it 8 must be in the name of a particular school 9 district that has that ownership interest; 10 computed, that requires there be records to 11 determine the earnings on a per school basis; 12 recorded, the Treasurer must put the actual 13 earnings into his or her official records; and 14 credited, the earnings must increase the account 15 balance of the individual school district in 16 full for all of those earnings. 17 Again, there's no discretion in 18 Section 8-7. There's no basis for estimating 19 earnings in Section 8-7. There's no statutory 20 power to process some earnings but not all 21 earnings. There is no excuses for an inability 22 to compute earnings. There are no exceptions 23 for recording separate and individual earnings 24 on an actual basis. And there's no power</p> <p style="text-align: right;">77</p>	<p>1 Section 8-7 when he allegedly over-allocated 2 earnings to LT. 3 There is in Illinois law no general 4 fairness action. There is a declaration of 5 rights has to be on the parties' rights with 6 respect to something substantive a statute, a 7 contract, a regulation, property rights, 8 something other than here's this thing we don't 9 like, fix it for us, please. 10 We have the following testimony that's 11 relevant. First of all, we've got an admission 12 by Dr. Birkenmaier with respect to interest 13 earnings. And in Exhibit A13, there's the 14 question and answer as follows: "Between 1995 15 and 2012, which is the time period involved in 16 the TTO claim with respect to interest in this 17 case, did the TTO regularly pay out to the 18 districts either the entire amount or nearly the 19 amount of interest that the TTO earned on the 20 pooled investment plan?" 21 And the representative of the TTO said, 22 "I don't know." 23 Question, "why do you not know that?" 24 Answer, "I don't know what the total</p> <p style="text-align: right;">79</p>
<p>1 granted to the Treasurer to credit less than 2 full earnings directly to the school district. 3 Now we move to paragraph 44 of the 4 second amended complaint, and it says, "In 5 fiscal years 1995 through 2012, the Treasurer 6 allocated \$1.5 million and change in interest on 7 investments to LT. And then they go on to say 8 that it's not fair to the other districts. They 9 allege that other districts suffered loss as a 10 result of what they allege to be over 11 allocations to LT. 12 And then we get to paragraph 47, and it 13 says, because of its statutory obligations to 14 all of the districts it serves, the Treasurer 15 brings this action seeking declaratory relief 16 for the public purpose of reallocating interest 17 so that the other districts it serves will not 18 suffer. 19 Now, then the question is, what is the 20 substantive legal theory of the investment 21 earnings claim because there has to be one. The 22 only theory that's identified in the complaint 23 is Section 8-7. The TTO is claiming that the 24 Treasurer at the time, Mr. Healy, violated</p> <p style="text-align: right;">78</p>	<p>1 amounts were that were earned." 2 Now we have Mr. Martin's testimony. 3 And Mr. Martin was the person who carried the 4 ball for the TTO on the investment earnings 5 claim. He admits that the TTO lacks records to 6 determine the amount of investment earnings for 7 the entire period, 1995 through 2012. And this 8 is the time period that the TTO chose. He 9 admits that in earlier years, the TTO was 10 missing 50 percent of its source documents; in 11 later years it's missing at least 10 percent. 12 He admits he has no idea how much the TTO 13 earned. He admits he has no idea how much LT is 14 entitled to be credited. Admits he did not use 15 the statute in -- originally in connection with 16 his work. But I went back and asked him 17 questions about it, and he made these admissions 18 knowing what was in Section 8-7. He did not 19 hide that from him. 20 He also admits that his analysis relied 21 on handwritten notes that Healy wrote, which he 22 claims -- which he admits were estimates. He 23 also testified they were round numbers, like 24 500,000 or a million. And that they plainly</p> <p style="text-align: right;">80</p>



1 were not actual earnings.
2 So what does this mean for purposes of
3 the TTO's case? Problem No. 1 is that the claim
4 says the Treasurer allegedly violated
5 Section 8-7. The TTO is claiming the Treasurer
6 violated Section 8-7 and is suing LT for those
7 violations. There's nothing in 8-7 that gives
8 the Treasurer the right to sue a school district
9 for a statutory violation by the Treasurer.
10 There is no claim of fraud or mistake
11 directed at LT. This is because there's no
12 evidence that the TTO gave the district any
13 information of earnings sufficient to know how
14 much in earnings they should have received. It
15 was just a bottom-line number that was
16 translated through journal entry.
17 There was no reports in evidence on
18 investment earning distributions, which itself
19 is shocking, and representative of how the TTO
20 did business during these 17 years. There's
21 just some handwritten notes.
22 And we don't have in this case claims
23 by the Trustees against the Treasurer here. In
24 fact, in this complaint, it says that the

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1 plaintiff is the Board of Trustees, but it also
2 says that the Treasurer is bringing this action.
3 So, now problem No. 2 is equally
4 problematic in that there's no evidence of any
5 actual violation of Section 8-7. For the TTO to
6 prove a violation of Section 8-7, the TTO would
7 need to show that actual earnings on pooled
8 investments are separately and individually
9 computed and recorded and credited to a school
10 district, and that those credits exceeded the
11 amounts that the school district was entitled to
12 be credited.
13 Martin can't do that, which is why he
14 falls back on what LT calls the one big stomach
15 argument. So what Martin said was that it
16 doesn't matter in his opinion that allocations
17 were less than actual earnings. And we looked
18 at audit reports from the TTO, which were
19 problematic. They were only there for some
20 years and not others. He didn't use them at all
21 to rely on his testimony. They seem to indicate
22 some years that there were net -- there was a
23 leftover net amount undistributed, uncredited,
24 but that wasn't part of his testimony. He

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1 wasn't able to sort that out.
2 So what he said was it doesn't matter
3 if the TTO or the Treasurer failed to comply
4 with Section 8-7 and failed to credit the
5 earnings, because the money that was uncredited
6 would just stay in the unallocated portion of
7 the investment pool.
8 There's no testimony of any kind from
9 the TTO to quantify those uncredited earnings.
10 And there's no evidence of any kind that that
11 money actually remained in the pool or that
12 actually -- that wasn't part of the fraud that
13 Healy engaged in, the over a million dollar
14 fraud.
15 And on top of that, the testimony's
16 directly contrary to the language of
17 Section 8-7. It's mandatory that earnings from
18 pooled investments should be credited
19 individually and separately to each school
20 district. For Martin's approach to make any
21 difference or have any relevance, Section 8-7
22 would have to say that earnings from pooled
23 investments do not have to be separately and
24 individually computed and reported and credited,

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1 and instead, they can remain in the investment
2 pool. That's just the opposite of what Section
3 8-7 provides. It provides plain language.
4 Now, we've also got this argument from
5 the TTO about the other districts. Again, this
6 is sort of a free-floating argument based on
7 what they claim to be fairness. It's clear from
8 Martin's testimony that he couldn't calculate
9 the actual credits due any of the districts, not
10 just LT. The information's not available.
11 It's also clear he only looked at a few
12 quarters from other districts. He can't testify
13 as to whether those other districts were
14 over-allocated or under-allocated with whatever
15 Healy chose to allocate. He only looked at ten
16 quarters from District 109, and so on. It
17 wouldn't be relevant. But he doesn't know that
18 in any event.
19 I want to give the Court an analogy.
20 Let's assume that there were earnings in a
21 particular time period on pooled investments, an
22 investment pool of \$10. Let's also say that
23 Healy decided -- wrote a note somewhere and
24 let's say that's even accurate, which we

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1 dispute, by the way, and he decided to
2 distribute five of those ten bucks. Let's
3 assume LT was getting 20 percent of its slice of
4 the pie. All right? So that means that LT
5 actually earned \$2, 20 percent of the ten bucks.
6 So if LT got 20 percent of the \$5 that
7 was actually allocated by Healy, it would only
8 get a dollar. Right?
9 Now, let's say Healy distributes a
10 dollar and a half to LT. And somehow let's
11 assume he distributes less proportionately to
12 the other districts. What happened? What
13 happened there is LT got 0.5 less than it
14 earned. It earned 2, it got 1.5. And it got
15 0.5 more than some theoretical share of an
16 allocation. Which, again, we're not saying
17 happened, but that's taking Martin's testimony
18 at full face value. That's what he says.
19 And the answer to that is so what?
20 That's not a violation of Section 8-7. Healy
21 violated Section 8-7 because he caused LT
22 damages of 0.5 because they were credited with
23 less than what they earned. And that violated
24 Section 8-7.

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1 Now, the other districts in this
2 scenario might have been damaged to a greater
3 percentage. There's no rule of law that says
4 victims all have to be disadvantaged in the same
5 proportion.
6 So that's the best read and the most
7 generous take on Martin's testimony, keeping in
8 mind the TTO's and his admissions.
9 Now, let me just wrap up by saying,
10 what difference does it make to grant this
11 motion? And why should we not be conservative
12 and wait to hear all of the evidence that comes
13 forward in this case?
14 I certainly understand the inclination
15 and desire to be conservative and to present an
16 appellate court with a full appellate record.
17 However, if this motion is granted at this time,
18 LT will not have to ask all of its witnesses and
19 the TTO's individuals that it has called as
20 witnesses, Healy and Hartigan, to explain
21 everything about investment earnings. That's
22 going to save hours of witness time for
23 everyone.
24 And it's important not just for LT to

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1 save money, but it's important for the TTO to
2 save money if there is money to be saved. This
3 Court knows from reading the trial brief that it
4 is the position -- that LT is being charged a
5 significant percentage of the attorney's fees of
6 the TTO, including all of the lawyers who are on
7 this call right now. And that next year we will
8 get a bill for the five or however many lawyers
9 they're billing today. And that's all taxpayer
10 money. And it's all taxpayer money for LT and
11 all the other districts.
12 We also would not have to call our
13 expert witness, Martin Turmstrom. Martin
14 Turmstrom is a lovely gentleman. He's retired,
15 but he's available to testify. He will testify
16 about many deficiencies in the TTO report, but
17 those deficiencies are evidence in testimony
18 Mr. Martin gave and this Court's own questioning
19 of Mr. Martin.
20 Should we have a final argument, should
21 we have a posttrial briefing, the same thing.
22 We're going to have to deal with this
23 \$1.5 million claim. We're going to have to
24 spend a lot of time and energy and effort.

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1 So understanding that these are
2 difficult motions to ask for, understanding that
3 it's a -- it's a hard ask, we would ask this
4 Court to very seriously consider it and
5 respectfully grant our motion.
6 THE COURT: Before the plaintiff jumps in,
7 let me ask you a couple questions. I'm looking
8 at the prayer for relief in the second amended
9 complaint.
10 MR. KALTENBACH: Okay. Let me just take one
11 second. I have excerpts. Let me pull that up.
12 THE REPORTER: Your Honor, may I have just
13 one minute?
14 THE COURT: Sure, let me know when you're
15 ready.
16 (Whereupon, a short recess was
17 taken.)
18 THE COURT: So, Mr. Hoffman, there's a number
19 of lettered paragraphs there in the prayer for
20 relief. Which are the lettered paragraphs that
21 you believe are related to the investment claim?
22 MR. HOFFMAN: Yes, sir. It is D as in David
23 and E as in Edward.
24 THE COURT: Just those two?

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1 MR. HOFFMAN: Correct.
2 THE COURT: All right. And let me ask you
3 this question. There's been reference at the
4 trial and also in the motions you argued before
5 me earlier to legislation that allows 204 to
6 separate from this organization or arrangement
7 once this lawsuit has ended. Is that right?
8 MR. HOFFMAN: That is correct. So I believe
9 that's in our exhibits as a demonstrative.
10 THE COURT: And does that legislation provide
11 for -- what does it provide, if anything, for
12 how that separation is accomplished and how
13 204's share of the pool would be distributed
14 to it?
15 MR. HOFFMAN: It does not provide. It is a
16 source of great concern to LT. And it -- it has
17 kept some people up at night, I think. But it
18 doesn't -- it doesn't lay out any type of
19 detailed construct for dispute resolution
20 mechanism or anything of that nature that I
21 think you might be envisioning.
22 It just says that once we -- once we
23 depart, you know, we'll have a right to depart.
24 So, look, there are going to be issues with

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

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

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

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1 of Merrill Lynch bank statements, all that stuff
2 he exhaustively went through. That's why his
3 bill was around \$120,000 and is more now is
4 because he and his team went through all records
5 that were possibly available to the TTO. And he
6 was completely unable to do a forensic audit of
7 the investments for this time period.
8 So no matter what happens with regard
9 to our departure -- and, look, I'm willing to
10 concede that Mr. Martin is good at what he does.
11 We're not contesting that somebody else could
12 come in and do a better job looking at all those
13 records.
14 And we're not disputing that the --
15 that the TTO is missing a majority -- well, half
16 of its records in many years and at least some
17 missing records for all of the years. There's
18 no dispute to that. The TTO's records are a
19 mess.
20 And I will tell you, frankly, this is
21 the reason that we did not file a counterclaim
22 for this Healy time period for being
23 under-credited for our investment earnings. The
24 reason we did not sue them for under-crediting

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1 us like we did in subsequent years is because
2 the records are simply not there. They're
3 unavailable, and we could never support a
4 counterclaim for the Healy years on investment
5 earnings. And so that's not going to change in
6 2021 when we're leaving and there's somebody
7 just like James Martin in place to do a forensic
8 audit.
9 THE COURT: Let me hear from the plaintiff.
10 MR. QUINLAN: Sure, Judge. Again, William J.
11 Quinlan on behalf of the Lyon's Township
12 Trustees and the plaintiff here.
13 Let me start by saying a couple of
14 things. Obviously, the first is that
15 Mr. Hoffman chose not to file a motion here and
16 rather argue it orally. It's clear that much of
17 what he's arguing here is something that's
18 probably more proper for a motion on the
19 pleadings, a motion to dismiss, or a motion for
20 summary judgment.
21 He's speaking about interpreting
22 statutes and the like. And it's something that,
23 you know, at least the initial part of his
24 argument, as I understood it -- I appreciate it

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1 went on for a bit -- was something that could
2 have been raised there and deals more with
3 interpreting the statute.
4 I will say he made the point over and
5 over again that the statute uses the word shall.
6 And that, therefore, that gives this Court no
7 discretion. And I will tell you just, you know,
8 something, unfortunately, I learned in my time
9 in government, but it is just a fact, that the
10 Supreme Court of Illinois as well as the
11 appellate court has routinely interpreted the
12 word shall, even though placed by the
13 legislature and the general assembly, to not
14 mean shall and make it as discretionary.
15 And the cases that I quickly pulled up
16 on that is People Ex Re Harris versus Paul,
17 which is 35 Ill 2d 384. You also see it in
18 People Ex Re Meyer versus Kerner.
19 MR. HOFFMAN: Bill, could you slow down a
20 little when you're reading these because I
21 didn't get these, and I haven't heard this
22 before, so I'm trying to write it down.
23 MR. QUINLAN: Judge, I'm happy to do that,
24 and I will slow down, and I do appreciate it.

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1 But there's been a lot of interruptions. I'd
2 like to finish. I've treated everyone
3 courteously, and I just hope to do that.
4 MR. HOFFMAN: I didn't mean to be
5 discourteous. I apologize.
6 THE COURT: At the end of Mr. Quinlan's
7 arguments, I'm sure he can give you the case
8 citations.
9 MR. HOFFMAN: Thank you.
10 MR. QUINLAN: And I'm happy to give it to the
11 Court. I'm not trying to be difficult, but I'm
12 trying to respond to what I heard, and I did in
13 all fairness pull this up quickly.
14 And, you know, it continues. There's
15 more, but this is -- you know, when I say
16 unfortunately, here is a recent one. It's
17 Brennan versus the Illinois State Board of
18 Elections, 336 Ill. App. 3d 749. And that's
19 from 2002.
20 Courtney versus County Officials
21 Electoral Board, 314 Ill. App. 3d 870. They
22 also applied it to the Corporation Act in
23 Advanced Imaging Center of Northern Illinois
24 Limited Partnership versus Cassidy, 335 Ill.

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

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

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

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

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1 order to pay your bill, and basically the
2 summation was, well, nothing, because we're in a
3 lawsuit.
4 And in the same cross-examination, he
5 recognized that them not paying their bill
6 affected all the other districts.
7 So the concept that anyone's trying to
8 save taxpayer money here, and we're supposed to
9 just run short adrift on this in order to do
10 that is at best rich, and at most disconcerting.
11 THE COURT: That's really not a concern for
12 me. I'm certainly concerned about the spending
13 of taxpayer money, but I'm not going to short
14 circuit a trial if I think there's an issue
15 because, you know, one side or the other may be
16 put to expense.
17 But I am concerned with the theoretical
18 underpinnings of the claim. Let me ask you
19 this. Why -- why couldn't the trustee -- the
20 Trustees have simply made a journal entry that
21 says we found a misallocation back in 1999; we
22 make a journal entry to correct it? Why do we
23 even need to be in court?
24 MR. QUINLAN: I think that's a fair question,

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1 Judge. And at the risk of myself testifying,
2 because it's not something we did raise. It
3 came down to this specific point. And we kind
4 of end up spinning this around.
5 You heard, I'll say, the testimony from
6 Mr. Hoffman about what happens if we break up
7 and the money isn't spent, and we could end up
8 in, I think the phrase was, more litigation.
9 The concern, and we end up spinning
10 around, is if we make the journal entry,
11 your Honor, and then 204 comes in and files a
12 lawsuit, we are where we are today. It's just a
13 difference between who's the plaintiff and who's
14 the defendant.
15 At the end of the day, we need some
16 resolution on behalf of all the other taxing
17 districts and on behalf of 204 to get this
18 resolved.
19 THE COURT: I understand. But I don't
20 understand how that resolution comes out of this
21 lawsuit absent a winding up, at least with
22 respect to 204, of all the affairs of this
23 organization.
24 Because Mr. Hoffman is right in that

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1 the allocations are relative, as I've heard the
2 testimony, and without knowing whether or not
3 disproportionate allocations were made to the
4 other districts, how do I know that there was an
5 over-allocation to 204? And how do I know the
6 amount of that over-allocation?
7 And more than that, how do I know that
8 in some subsequent year, there wasn't an
9 adjustment or an under-allocation or an
10 over-allocation to some other district that
11 doesn't even things out? And the question I
12 have is, why should I -- or why should we --
13 now, things may have been different when this
14 lawsuit was filed. But why should we focus on a
15 limited period with respect to one of a dozen
16 entities and decide what should or shouldn't
17 happen for that limited time with respect to
18 this entity without understanding what happened
19 before and after and at the same time with
20 respect to the other entities?
21 MR. QUINLAN: Your Honor, my answer to your
22 question, which I think is fair, and I believe
23 was posed to Mr. Martin, was that he did sample
24 other districts, and he found that that was de

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1 minimus. And I will say, with respect to other
2 circumstances like this, which the Court might
3 be familiar, that, you know, the Court, both the
4 Supreme Court and others, have recognized that
5 sampling like that is something where they can
6 take an appropriate because the effort it would
7 take to do the type of full-scale audit that
8 you're talking about that we'd bring in an
9 expert, and you see it in the evaluation of
10 Medicare, Medicaid repayments, things like that,
11 where you will do a sampling.
12 Sampling will -- before the Court has
13 been upheld, and I'm happy to provide the Court
14 with those cases. But here Mr. Martin said in
15 response to the same type of questioning the
16 Court is asking me, that I took a sampling of
17 the other districts, and based upon the
18 sampling, that any over or under-allocation was
19 de minimus.
20 So he did look at it with respect to
21 that to reach his reasonable degree of
22 accountant certainty with respect to the money
23 that was improperly allocated to 204. But I
24 think your points are fair in that it really

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1 says it's a very complicated issue which, you
2 know, makes sense to at least hear from everyone
3 else.
4 But Mr. Martin did address that and did
5 address the Court's concern in trying to
6 determine as an expert what those figures are
7 that he stated again with his certainty was
8 improperly allocated to 204.
9 THE COURT: Well, what is it -- if I
10 reallocate, if I give you the relief that you're
11 requesting, what is the implication of that for
12 an eventual resolution of this case?
13 In other words, am I saying that during
14 the period of time all of the other allocations
15 with respect to all the other districts are
16 correct? And that when somebody tries to unwind
17 this thing, this period is already decided with
18 respect to everyone? I don't know what the
19 implications are of this ruling.
20 MR. HOFFMAN: You're muted, Bill.
21 MR. QUINLAN: I appreciate that. Judge, I
22 just want to get you a thorough answer. I just
23 want to ask Mr. Kaltenbach --
24 MR. HOFFMAN: I will want to reply later.

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1 MR. QUINLAN: Guys, sorry for the delay. I
2 want to get you a thoughtful answer.
3 I think the answer to your question is
4 twofold. One is the concern here is the
5 withdrawal of 204 and the effect that that has
6 because as -- you know, again, I appreciate the
7 others, but we're talking about a number that,
8 you know, as far as on their ledger, that if you
9 were to add them all up, there's not -- that
10 kind of money is not in the pod.
11 So if they walk away, we're trying to
12 adjust that ledger as it relates to the other
13 districts. We're not asking you to make a
14 ruling with respect to the other districts,
15 whether that's right or not. And, in fact,
16 they're not challenging anything.
17 In fact, they're here, and you heard
18 Mr. Thiessen testify that to the extent there
19 was some under-allocation, that he'd work it out
20 with them. We have no basis to believe that he
21 wouldn't. And it's not a particular issue.
22 In fact, you know, I think -- you could
23 see that none of the -- you know, the other --
24 and I know this claim's not before the Court,

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1 but it demonstrates the point that I think
2 you're concerned about, which is when you see
3 the other districts that are paying their fair
4 share, not taking setoffs and the like, they are
5 working with the TTO, or really working with the
6 other districts because it's not the TTO, it's
7 how it affects the other districts to get there.
8 The concern is based on the testimony
9 from Mr. Martin, if you were to reallocate the
10 interest, is to get us back to the center, so
11 that they don't walk out where we're left with
12 this deficit, which is really, we don't have
13 money, they're gone, and they're taking this
14 money out.
15 And then we really have to deal with
16 the other districts where we've got this, you
17 know, phantom numbers, because we haven't
18 deducted it. As the Court suggested, why didn't
19 we do it at the beginning to get us to a true
20 number. So I don't think you have to worry
21 about how it affects the other districts.
22 That, obviously, A, is not before you.
23 But the more practical level, those districts
24 aren't complaining. They're sitting here trying

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1 to get this number back to center. And based on
2 Mr. Martin's testimony, that, you know, it is
3 de minimus.
4 And I think you also can see that
5 they're not complaining and in here asking for
6 this and this. We are bringing that claim to
7 some degree on their behalf because it's our
8 obligation to get these books right.
9 THE COURT: No, no. I'm -- they're not here
10 complaining because all you're doing is asking
11 for money from 204, which would inure to their
12 benefit. What I'm saying is that the
13 allocation, whatever it is, is all relative.
14 MR. QUINLAN: 100 percent. I completely --
15 it's a zero sum gain. As one goes up, another
16 goes down. There's only so much money.
17 THE COURT: I guess what I'm saying is I
18 don't understand how this problem can be
19 resolved without looking at the fund from
20 beginning to end and deciding who owes what to
21 whom.
22 Now, I recognize that there are going
23 to be limitations on the ability to do that
24 based upon the inadequacy of records. And

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1 Mr. Hoffman, that's something that everybody's
2 going to have to live with. So somebody's going
3 to have to come up with some method of
4 allocating what's been unallocated. But --
5 okay. Let me just stop. Let me hear from
6 Mr. Hoffman.
7 MR. QUINLAN: Can I say one thing? I'm not
8 trying to be difficult.
9 THE COURT: Go ahead.
10 MR. QUINLAN: I think your point is fair, and
11 I say this just because we're not in the same
12 room, and otherwise I'd be able to say this to
13 Jay kind of offline.
14 In the sense that I don't disagree that
15 if we were to sit down with 204 and say could we
16 agree to some mutual type of audit where we're
17 going to get together and everyone sits down and
18 figures out what these numbers are. And
19 wouldn't it be better for the Court to do that
20 offline is something I think we're open to
21 because we want to get to -- I get your point.
22 You use the Churchill phrase, like this
23 is, you know, the best way we know how to do it
24 or the worst way we know how to do it, other

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1 than anything else, Judge, short of some
2 resolution.
3 THE COURT: My concern is that it's just not
4 right, I guess, would be the way I'd put it.
5 But let me hear from Mr. Hoffman.
6 MR. HOFFMAN: well, a couple things. Let me
7 just start with, look, in terms of what Bill
8 just said, your Honor, our dealings with the TTO
9 have been extremely frustrating, extremely
10 contentious. I know I'm not on their Christmas
11 card list.
12 I've lived this case for the past four
13 years. Look, this is how the TTO chose to bring
14 this case. They were the masters of their case,
15 and this is how they did it. And so I made -- I
16 telegraphed very clearly in our trial brief that
17 we would be seeking a directed finding on this
18 issue. And every meeting we've had, including
19 the pretrial conference, I've told everyone
20 that. It's no surprise. And I don't believe
21 that it needed to be put into a written
22 document.
23 I think we were benefited by having the
24 Court hear the testimony. And I think it's very

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1 common and traditional in cases I've tried to
2 move for a directed verdict orally as I have. I
3 also supplied all the cases that supported our
4 position Friday in the e-mail I sent everyone.
5 And the Court Thursday encouraged everyone to
6 send what they had on Friday or over the
7 weekend.
8 I'm just hearing about these cases
9 Mr. Quinlan is citing today. But they don't
10 appear to address our situation because they
11 really get to the authority of the Treasurer.
12 And that's not what we're dealing with. LT is
13 being accused of violating this section by
14 actions that their Treasurer took. Now --
15 THE COURT: No, no. That's not really what's
16 happening. What they're asking for is a
17 declaratory judgment. They're asking that the
18 Court rule that certain funds belong to them.
19 They're not -- that doesn't require misconduct
20 on the part of 204. So I don't see that.
21 MR. HOFFMAN: Maybe not misconduct, but
22 somehow they're alleging that this section
23 wasn't done right. And by the way, in terms of
24 the Treasurer bringing the action, Mr. Quinlan

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1 is inaccurate in terms of his complaint. It is
2 not one paragraph. It is three paragraphs.
3 They have three claims. At the summation of
4 paragraphs 37, 47, and 60, it says, the
5 Treasurer brings this claim. So that's no
6 error.
7 And they've known about this issue
8 forever. We've argued about this in motions to
9 dismiss that they filed. They've tried to say
10 they have no obligation to us. They're not a
11 fiduciary, dot dot dot. That's why we haven't
12 been able to work out these things.
13 You're going to see in the context of
14 our counterclaim that we don't feel we've been
15 treated like someone who's a fiduciary, someone
16 who supposedly had this company, this entity
17 working for us in theory. They don't give us
18 information. They don't treat us the way it
19 needs to be treated.
20 But let's get back to the Healy era.
21 This -- oh, in terms of the other districts, by
22 the way, paragraph 46 talks about what they
23 intend to do with this money and the
24 reallocation. Now, they say to the extent that

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1 LT has been over-allocated in the interest, it
2 means that the other districts have necessarily
3 been under-allocated. You know that's not how
4 we view it or how LT views it.
5 Then it says, "The Treasurer
6 anticipates that once this interest is able to
7 be properly reallocated among the districts,"
8 and has examples, 102 gets \$265,626; and Argo
9 gets \$319,077.
10 Okay. First of all, that doesn't even
11 take into account the more than \$3 million that
12 they've spent in public funds on attorneys' fees
13 in this case.
14 So we have a situation, and we're going
15 to talk about this in the context of the
16 counterclaim, where a million dollars came in.
17 And according to the testimony we've heard from
18 Mr. Getty, that a million dollars came in for a
19 settlement on bond claims. None of that money
20 was actually credited to the district. It all
21 went to stuff. Okay?
22 Now, whether it went rightfully or
23 wrongfully, we're going to decide in this case
24 at some point in the future. But for them to

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1 claim that if they get the 1.5 million, that
2 they're going to take that 1.5 million, and
3 they're going to split it up amongst the other
4 districts is not consistent with what has
5 occurred in the past, it doesn't take into
6 account the enormous amount of fees that they've
7 incurred, which they billed us for.
8 So to say that we don't care about
9 public funds, look, if we lose on our legal
10 position that we don't have to pay for the cost
11 of being sued, we're going to have to pay that
12 money. It's hundreds of thousands of dollars.
13 THE COURT: Okay. None of this is relevant
14 to the legal issues that I'm trying to decide.
15 MR. HOFFMAN: Right. Correct. But it does
16 address some of the things that Mr. Quinlan was
17 talking about.
18 Now, these other districts are not part
19 of this case. Now, that's a critical point.
20 These districts are not parties, and they did
21 not authorize this lawsuit by Board action.
22 This is something that the TTO did entirely on
23 its own.
24 Mr. Thiessen testified that he did not

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1 go to the other districts and seek their
2 approval for this. And their rights, while
3 they're -- we feel sorry for the other
4 districts. We feel sorry for them. We think
5 they were mistreated by Healy, too. We think
6 the amount of money Healy stole is well over a
7 million dollars.
8 But, again, you saw a written document
9 that -- that the TTO wrote saying several
10 districts that asked for a forensic audit --
11 this was in 2013, I believe -- and we're not
12 doing one. And then it said, by the way, other
13 districts, we're not sharing the information
14 about the lawsuit with you, either.
15 So what happened under Healy is a
16 giant, black hole. No one, no matter how
17 brilliant they are, will ever figure out, in our
18 view, what happened during the Healy era. It
19 doesn't matter who the forensic auditor is.
20 Martin couldn't figure it out. We're not going
21 to be able to figure it out. Again, that's why
22 we didn't counterclaim.
23 So in our view, the Healy era should be
24 a sad and unfortunate thing that happened to

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1 everyone and that disadvantaged everyone. But
2 we're never, whether we do it in the context of
3 leaving the TTO or we do it right now, we're
4 never going to figure out this information on
5 investment earnings and whether we got more or
6 less or whether it was more or less than we
7 actually earned.
8 And that's our whole point in this
9 motion. Martin tried his best. He could not
10 determine how much earnings were made. The TTO
11 through Birkenmaier admitted she had no idea
12 what the actual earnings were. So I don't think
13 it's a rightness problem.
14 Frankly, if we just kick this off for
15 when we leave the TTO, what you will guarantee
16 is an even bigger piece of litigation that we
17 will have with the TTO in 2021 or 2022 or some
18 other date.
19 This is how the TTO chose to bring this
20 case. This is the forensic auditor that they
21 hired. These are the documents that they had to
22 give him. This is the claim that they have
23 made. And they based it on Section 8-7.
24 It just doesn't work. And there's

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1 in October of 2013, I will represent to you. So
2 I don't want you to tell me in any respect what
3 lawyers advised you to do or not do. Fair
4 enough?
5 A. Yes, sir.
6 Q. Okay. And that wasn't me. I got
7 involved after you were gone, correct?
8 A. Yes, sir.
9 Q. Now, this line item for financial
10 software not paid, do you see that, about
11 \$218,000?
12 A. Yes, sir.
13 Q. What do you recall on that issue?
14 A. They were purchasing a software system,
15 and we felt it was -- they had a
16 responsibility -- a legal responsibility to keep
17 the books. This is for new software that we
18 thought was out of the scope of what their
19 responsibilities were.
20 Q. Okay. Would you open Exhibit D -- LT
21 Exhibit D, as in David, 1, please.
22 A. D1?
23 Q. D1.
24 A. Hold on a second. Yes, got it.

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1 Q. This is a letter from Dr. Kilrea, the
2 superintendent of LT, to Dr. Birkenmaier, the
3 Treasurer of the TTO, April 11, 2014, right?
4 A. Yes.
5 Q. And did you receive this letter at this
6 time? Do you remember receiving the letter at
7 this time?
8 A. I believe so, yes, we did.
9 Q. Okay. This letter, I'm not going to
10 ask you a lot about it, but it goes through an
11 explanation of LT's position on these software
12 expenses.
13 To the best of your recollection, does
14 this letter correctly set forth LT's position on
15 that --
16 A. Yes.
17 Q. -- range of expenses?
18 And do you have anything to add to it
19 outside of this letter?
20 A. From the perspective of somebody who is
21 a financial person by background and works in
22 the world of accounting, representing accounting
23 firms, having a financial software is necessary
24 for any business to operate. Having a

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1 financial -- but there are financial softwares,
2 and there are financial softwares that have
3 add-ones like HR functionality, salary
4 negotiation functionality, employee management
5 functionality, applicant tracking functionality.
6 There are far less expensive softwares
7 that don't necessarily contain all that
8 software. Small businesses all the time get
9 financial software that does not necessarily
10 have that functionality and costs far less, or
11 small businesses wouldn't be able to operate.
12 Q. Now, in paragraph 1, it makes a
13 reference to Skyward. It says, "District 204
14 has recently purchased Skyward, and it would be
15 a waste of district resources to purchase an
16 additional software package for which we have no
17 use or purpose."
18 Do you see that?
19 A. Yes, sir.
20 Q. Do you know which came first, LT's
21 purchase of Skyward or the TTO's purchase of the
22 Infiniti Visions software?
23 A. I believe Skyward came first.
24 Q. Okay. And going back to Exhibit D11,

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1 78 some thousand dollars in other charges here.
2 Do you have any recollection as to why those
3 other charges were deducted?
4 A. Well, yes. That was at the point when
5 the breakup was occurring, and there was a
6 source -- it was a contentious breakup, to say
7 the least. And we, at this point in time,
8 challenged deducting these expenses because they
9 were, in fact, expenses based upon what we had
10 agreed upon.
11 Q. Now, different topic, sir. I want to
12 ask you what could or would have happened if
13 certain things were different in this case. And
14 I'm required to do that. I understand that it
15 calls for some degree of speculation, but it
16 relates to a legal issue, so let me just charge
17 through it and see what happens with Bill here.
18 So, sir, if there was no agreement, as
19 you testified, from the TTO, to pay for certain
20 of LT's business expenses during the time period
21 that they did, would LT have been able to do
22 anything differently in the absence of that type
23 of agreement?
24 A. Would I believe -- absent the proposal

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Exhibit C

Township Trustees of Schools

TOWNSHIP 38 NORTH, RANGE 12 EAST

www.lyonstto.net

BOARD OF SCHOOL TRUSTEES
Michael S. Thiessen, President
Shakana L. Kirksey-Miller, Trustee

22 Calendar Ave. STE D
LaGrange, IL 60525
Phone 708-352-4480
Fax 708-352-4417

Minutes of the Special Meeting of the Board of Trustees of the Lyons Township School Treasurer's Office September 23, 2021 – 5:00 P.M.

The Board of Township Trustees of Schools, Range 38 North, Range 12 East, Illinois (Lyons Township) have called a special meeting on September 23, 2021, at 5:00 P.M.

Pursuant to Governor Pritzker's Executive Order 2020-73, the regular meeting will be a virtual meeting.

Microsoft Teams Virtual Meeting Information

[Click Here to Join Meeting](#)

To Join Meeting via Phone, Dial +1-872-810-3297,
and enter Conference ID: 476 829 92#

Mr. Michael Thiessen	<u>X</u>	_____
Ms. Shakana Kirksey-Miller	<u>X</u>	_____

Staff Virtually Present

Kenneth T. Getty, Treasurer
Brigid Murphy, Director of Finance and Operations

Others Virtually Present

Ed Wong, LTTO Attorney
Cynthia Schilsky, League of Women Voters
Jay Hoffman, Attorney for Lyons Township High School District #204
Patrick McPherson, Court Reporter for Lyons Township High School District #204
Brian Waterman, Superintendent, Lyons Township High School District #204
Jennifer Dunleavy, LaGrange Highlands School District #106 Board Member
Bob Skolnik, Reporter, Riverside-Brookfield Landmark
One (1) Anonymous Virtual Guest

Call to Order

President Thiessen called the meeting to order at 5:08 P.M.

Pledge of Allegiance

Public Comments - None

Acceptance of Trustee Dickman’s letter of resignation effective September 22, 2021

Motion by Trustee Kirksey-Miller to accept Trustee Dickman’s resignation as of September 22, 2021. **Seconded by President Thiessen.**

Roll Call: Ayes: Thiessen & Kirksey-Miller
Nays: None
Absent: None

Motion carried.

The Trustee’s discussed the requirements for the posting of the Trustee position, reviewing letters of interest for Trustee position vacated by Michael Dickman. **President Thiessen** made a motion to reschedule the October 25, 2021, Board meeting to October 20, 2021, at 5:00 P.M.

Seconded by Trustee Kirksey-Miller.

Roll Call: Ayes: Thiessen & Kirksey-Miller
Nays: None
Absent: None

Motion carried.

Quarterly Average Fund Balance and Quarterly Interest Allocation Examination (1995 to FY2020)

President Thiessen stated that the LTTO has been in court much of the today at the request of Lyons Township High School District #204. He further stated that the LTTO Board of Trustees is legally allowed to move forward with this agenda items, take the appropriate actions as an elected Board in legislative branch of the government and if there are any issues with that they will be handled by a judge. President Thiessen noted that LTHS District #204 has filed a new legal action and is prolonging the litigation at the expense of taxpayer dollars. He future stated that there has been a very high level of governmental transparency related to the Quarterly Average Fund Balance and Quarterly Interest Allocation Examination from FY1995 to FY2020, such as, publicly posting all calculations, monthly & quarterly allocations, and reports for review and that he felt LTHS filing a new action at the last minute is unprofessional at best. Treasurer Getty stated that after the Quarterly Average Fund Balance and Quarterly Interest Allocation Examination has been presented to the LTTO Board of Trustees several times. After presenting it at the September 13, 2021, meeting and at the direction of the LTTO Board of Trustees, the presentation and all supporting documentation was made publicly available on the LTTO website. Additionally, on September 15, 2021, this same information was emailed directly to current and former member districts, including LTHS. Treasurer Getty stated that he has not received any questions or feedback from any person or entity since it has been made publicly available, except for a brief discussion from LaGrange Highland District #106 Business Manager who inquired about a fund balance adjustment in FY2017. President Thiessen asked if Treasurer Getty received any communication or questions from LTHS regarding the analysis. Treasurer Getty stated he had not. President Thiessen said that, in is his opinion, the LTTO has a fiduciary obligation to other member districts to moving forward with this agenda item, bring this to closure as quickly as possible and to comply with the 90-day period under Illinois state.

Approval of Resolution 2022-01: A RESOLUTION OF TRUSTEES OF SCHOOLS OF (LYONS) TOWNSHIP 38 NORTH, RANGE 12 EAST, COOK COUNTY, ILLINOIS, TO APPROVE REVIEW AND ADJUSTMENT OF TTO BOOKS AND RECORDS TO ALLOCATE INVESTMENT INCOME

Motion by President Thiessen made a motion to approve Resolution 2022-01: A RESOLUTION OF TRUSTEES OF SCHOOLS OF (LYONS) TOWNSHIP 38 NORTH, RANGE 12 EAST, COOK COUNTY, ILLINOIS, TO APPROVE REVIEW AND ADJUSTMENT OF TTO BOOKS AND RECORDS TO ALLOCATE INVESTMENT

INCOME. Mr. Wong advised President Thiessen to read the following parts of the resolution into this transcript:

- “Whereas, the TTO Treasurer has reviewed the TTO’s books and records and examined the interest allocations to all of the districts from Fiscal Years 1995 to FY2020. Based upon this detailed review the TTO Treasurer has determined that prior yearly interest allocations were incorrect and, as a result, the fund balances of certain districts are inaccurate. In order to determine the proper amount of the interest allocations and, thus, the correct fund balances, the Treasurer reviewed and considered all districts’ books and records and the impact each fund balance adjustment would have on future allocations to all districts. The Treasurer and the TTO have determined that certain districts’ fund balances need to be modified. Specifically, District 104, District 105, District 1065, District 1067, and District 204 were over-allocated investment earnings by a total of \$1,384,386.79”.
- “Whereas, debiting future interest earnings or debiting the account of District 104, \$49,134.04 would cause District 104 to hold the proper amount of investment income owed to it; debiting future interest earnings or debiting the account of District 105, \$ 1,205.38 would cause District 105 to hold the proper amount of investment income owed to it; debiting future interest earnings or debiting the account of District 1065, \$ 63,810.97 would cause District 1065 to hold the proper amount of investment income owed to it; debiting future interest earnings or debiting the account of District 1067, \$ 7,016.32 would cause District 1067 to hold the proper amount of investment income owed to it; and debiting future interest earnings or debiting the account of District 204, \$1,263,220.09 would cause District 204 to hold the proper amount of investment income owed to it”.
- “Treasurer Getty may reallocate the following amounts to the following districts: District 101 \$25,153.31; District 102 \$104,620.65; District 103 \$64,003.30; District 106 \$343,469.16; District 107 \$20,440.31; District 108 \$15,525.54; District 109 \$521,076.73; District 2045 \$43,588.18; and District 217 \$246,509.62.”

Seconded by President Kirksey-Miller.

Roll Call: Ayes: Thiessen & Kirksey-Miller
Nays: None
Absent: None

Motion carried.

FY2021 – Quarterly Interest Distribution

Treasurer Getty reported that the District Audit Communication has been completed and sent to all member districts today. He also stated that the withdrawal of LTHS has created a triggering event resulting in an additional interest distribution to member districts. Treasurer Getty reviewed the calculation for FY2021 5th Quarterly Interest Distribution with the LTTO Trustees which totaled \$80,205.51 to all member districts. President Thiessen asked if this distribution would bring complete closure to FY2021, including any allocations due to LTHS as they remove themselves from the LTTO. Treasurer Getty noted that after this distribution all “undistributed interest” will be allocated to the LTTO Member Districts. Attorney Wong recommended that because this would be the final distribution to LTHS the LTTO Board should take a vote on the matter.

Motion by President Thiessen to accept the interest allocation as presented by Treasurer Getty.

Seconded by Trustee Kirksey-Miller.

Roll Call: Ayes: Thiessen & Kirksey-Miller
Nays: None
Absent: None

Motion carried.

Trustee Kirksey-Miller made a motion at 5:46 P.M. to suspend the Regular Meeting for the purpose of entering closed session under:

- *Illinois Open Meetings Act, (5 ILCS 120/2 (c)(11)*, “Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.”

Seconded by President Thiessen.

Roll Call: Ayes: Thiessen & Kirksey-Miller
 Nays: None
 Absent: None

Motion carried.

Special Meeting reconvened following Closed Session

Motion by President Thiessen to resume the Special Meeting of September 23, 2021.

Seconded by Trustee Kirksey-Miller. Closed session was adjourned at 6:10 PM.

Roll Call: Ayes: Thiessen & Kirksey-Miller
 Nays: None
 Absent: None

Motion carried.

Adjournment

Motion by President Thiessen to adjourn the Special Meeting of the Board of Trustees at 6:11 P.M. **Seconded by Trustee Kirksey-Miller.**

Roll Call: Ayes: Thiessen & Kirksey-Miller
 Nays: None
 Absent: None

Motion carried.

Minutes approved by:

***Minutes have been approved at the 10/20/2021 Meeting and will be signed when the current COVID-19 precautions allow

President, Michael Thiessen

Trustee, Shakana Kirksey-Miller

Date: 10/20/2021

Exhibit D

14918406

Chancery Division Civil Cover Sheet
General Chancery Section

(12/01/20) CCCH 0623

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

LYONS TOWNSHIP H.S. DISTRICT 204

Plaintiff

v.

TOWNSHIP TRUSTEES OF SCHOOLS

Defendant

Case No: 2021CH04844

CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

Only one (1) case type may be checked with this cover sheet.

- 0005 Administrative Review
- 0001 Class Action
- 0002 Declaratory Judgment
- 0004 Injunction
- 0007 General Chancery
- 0010 Accounting
- 0011 Arbitration
- 0012 Certiorari
- 0013 Dissolution of Corporation
- 0014 Dissolution of Partnership
- 0015 Equitable Lien
- 0016 Interpleader
- 0017 Mandamus
- 0018 Ne Exeat
- 0019 Partition
- 0020 Quiet Title
- 0021 Quo Warranto
- 0022 Redemption Rights
- 0023 Reformation of a Contract
- 0024 Rescission of a Contract
- 0025 Specific Performance
- 0026 Trust Construction
- 0050 Internet Take Down Action (Compromising Images)
- Other (specify) _____

Atty. No.: 34710 Pro Se 99500

Atty Name: Jay R. Hoffman

Atty. for: Plaintiff

Address: 200 N LaSalle St, Suite 1550

City: Chicago State: IL

Zip: 60601

Telephone: 3128990899

Primary Email: jay@hoffmanlegal.com

Pro Se Only: I have read and agree to the terms of the Clerk's Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice from the Clerk's office for this case at this email address:

Email: _____

FILED DATE: 9/22/2021 12:40 PM 2021CH04844

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

LYONS TOWNSHIP H.S. DISTRICT 204,)
)
Plaintiff,) No. 2021CH04844
)
v.)
)
TOWNSHIP TRUSTEES OF SCHOOLS)
TOWNSHIP 38 NORTH, RANGE 12 EAST,)
)
Defendant.)

**VERIFIED COMPLAINT IN CHANCERY:
INJUNCTION/TEMPORARY RESTRAINING ORDER**

Plaintiff Lyons Township High School District 204 (“LT”), by its counsel, asserts this Verified Complaint against Defendant Township Trustees of Schools Township 38 North, Range 12 East:

The Parties

1. Lyons Township High School District 204 (“LT”) is a high school district organized under the laws of the State of Illinois with a principal office located in LaGrange, Cook County, Illinois. LT sometimes is called “District 204” or “204.”

2. Township Trustees of Schools Township 38 North, Range 12 East (“TTO”) is a governmental body, organized pursuant to the Illinois School Code, 105 ILCS 5/8-1, *et seq.* The TTO consists of a three-member elected Board of Trustees who supervise a Treasurer and the Treasurer’s office, including staff. The TTO’s function is to receive, hold, manage, invest and account for tax funds collected on behalf of the TTO’s member districts. Unless otherwise indicated in this Complaint, TTO refers to the Treasurer, the Treasurer’s office, and the Trustees.

FILED DATE: 9/22/2021 12:40 PM 2021CH04844

3. The TTO's function is to receive, hold, manage, invest, and account for tax funds and other revenues collected on behalf of the TTO's member districts.

4. All tax monies collected for the member districts are held and invested by the TTO in a pooled account, but the moneys of each school district must "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 school districts. 105 ILCS 5/8-7.

5. The districts make their own budgeting decisions and determine what checks are to be written against their funds, but the checks are issued and signed by the Treasurer.

6. The TTO has no input into an individual district's budgeting or spending decisions, and may not spend a district's funds without authorization from the district. 105 ILCS 5/8-16.

7. The TTO does not receive tax revenue independently of the school districts; it has no independent source of funding and no funds of its own.

8. For all relevant times through June 30, 2021, LT was one of approximately twelve districts whose funds were managed by the TTO.

9. The TTO had a fiduciary duty to all of its member districts, including LT.

10. For many years through July 2012, the TTO Treasurer was Robert Healy.

11. In 2012, it was discovered that Healy was embezzling school district funds. As a result, he was convicted and sentenced to prison. No comprehensive forensic audit was ever conducted, but it was estimated that Healy stole in excess of \$1 million in school district funds.

12. A township trustee arrangement was once common in Illinois, but most treasurer's offices have been eliminated.

13. LT was an unhappy member of the TTO going back at least to the late 1980s. As a large high-school, LT had its own business office and believed it could perform its own accounting,

money management and investment functions better than the TTO. As the district holding the largest fund balance, it also believed that it was paying a disproportionate share of TTO expenses while not receiving commensurate benefits.

The 2013 Lawsuit

14. In October 2013, the TTO brought a lawsuit against LT (“the 2013 Lawsuit”). The TTO asserted three main claims, one of which was called the “Investment Earnings Claim.”

15. In the Investment Earnings Claim, The TTO claimed that in the period running from Fiscal Years 1995 through 2012, LT was allocated more income from the pooled investments than its proportionate share of distributions actually made. The TTO asked the Court for permission to reverse quarterly or annual interest allocation to LT that exceeded LT’s proportionate share during the respective quarter or year.

16. As discussed above, the statutory scheme requires the TTO to collect, hold, pool for investment purposes, and invest the money of the member school districts; however the TTO is required to separately account for the funds of each member district. Like expenses, investment income must be allocated to the member districts based on the ratio of the district’s funds to total funds held by the TTO at the time of allocation. The TTO must keep separate books of account for the member districts reflecting all receipts, expenses, allocated investment income and fund balances. The TTO must maintain an account balance for each member district, including the district’s balance in the pooled funds. Again, the TTO is not permitted to make any payments or issue any such checks for the expenditure of district funds without express authority from the issuing district.

17. The presiding Circuit Judge in the 2013 Lawsuit, Judge Esrig, held a trial in the 2013 lawsuit that began in November 2020 and ended in March 2021. At trial, the TTO presented numerous trial exhibits and several witnesses, including the testimony of an accounting expert and the current

TTO Treasurer, in support of its Investment Earnings Claim. In opposing this claim, LT presented its own exhibits and witnesses, including an accounting expert.

18. Judge Esrig issued a judgment order, containing findings of fact and law, on May 21, 2021 (“the Order”, Exhibit A).

19. The Order’s findings include the following: “At trial, LT moved for a direct verdict on this claim [the Investment Earnings Claim]. The court denied the motion but expressed reservations about the TTO’s methodology for computing the claim. Subsequently the TTO moved to voluntarily dismiss the claim. The court denied this motion, believing it was inadvisable to allow a party to voluntarily dismiss a claim after closing its case hearing the court’s reservations about the merits of the claim. At closing argument, the TTO abandoned its claim, essentially conceding that its method of computing over-allocations was flawed.” (Ex. A p. 23.)

20. The Order goes on to state that, despite the TTO’s abandonment of its claim, “the court is faced with a live claim which the parties litigated at great expense for approximately eight years. Therefore, the court offers the following analysis and ruling.” (Id.)

21. The Order contains a detailed analysis of the Investment Earnings Claim and concludes that the analysis the TTO presented at trial in support of the Investment Earnings Claim “was fatally flawed.” (Id. p. 24.)

22. In the Order, Judge Esrig rejected the Investment Earnings Claim in its entirety: “For all these reasons, the court concludes that the TTO has not proved any particular amount of investment earnings was over-allocated to LT and therefore denies the TTO’s request for declaratory relief as to this claim.” (Id. p. 26.)

23. In the Order, Judge Esrig also rejected the TTO’s two other main claims in their entirety: the TTO’s accounting expense claim, in which the TTO complaint that it wrongly paid for

LT's annual audits during the Healy era (id. p. 19-22); and the agreement to credit LT for certain accounting expenses, in which the TTO sought to disavow the parties' long-standing agreement and course of dealing to setoff certain accounting expenses against LT's share of the TTO's annual expenses. (Id. p. 3-15.)

The only relief that Judge Esrig awarded to the TTO was the right to debit approximately \$700,000 for certain pro rata expenses of the TTO that LT refused to pay after the Healy era, the vast majority of which were billings for LT's share of the TTO's legal expenses incurred in the 2013 Lawsuit. The Court's Order states, "While this result may seem inequitable in this case, that inequity is the inevitable result of the statutory scheme." (Id. p. 19.)

24. Thus, the TTO suffered an overwhelming loss after the trial of the 2013 Lawsuit. The TTO sought to recover over \$6.5 million in damages from LT, but recovered only about \$700,000. The TTO spent over \$4.2 million in legal fees on the 2013 Lawsuit, which fees LT and the other member districts will have to pay out of their school district funds.

25. The TTO had until midnight on June 21, 2021 to file an appeal. The TTO chose not to appeal from the Order, and the Order now is a final judgment.

Public Act 100-0921

26. After the filing of the 2013 Lawsuit, LT made efforts to seek permission in the form of a state law to leave the TTO's jurisdiction. LT did not use the accounting services of the TTO, relying instead on its own business office. LT was forced to use the investment services of the TTO, but was deeply dissatisfied with those services due to the TTO's refusal to provide complete information and documentation of its financial activities; the TTO's denial of its fiduciary obligations to LT and the other districts (Judge Esrig rejected the TTO's position on that issue); and the TTO's failure to pay all of LT's investment earnings on an ongoing basis.

27. In 2018, the Illinois General Assembly duly enacted into law Public Act 100-0921 (“the Act,” Exhibit B.) The Act amended Section 5-1 of the School Code. The Act represented a compromise among the legislators: LT could leave the TTO’s jurisdiction, manage its own financial affairs, and receive all of its assets, but only once the 2013 Lawsuit ended. (Id. p. 3.)

28. The Act states, in part, “upon final judgment, including the exhaustion of all appeals..., regarding claims set forth in [the 2013 Lawsuit], and all related pending claims, the school board of [LT] may commence, by proper resolution, to withdraw from the jurisdiction and authority of the [TTO]” The Act also required LT to appoint “its own school treasurer.” (Id.)

29. The Act further provides that once LT passes the withdrawal resolution and appoints its own school treasurer, “commencing with the first day of the succeeding fiscal year, ...: (1) the [TTO] shall no longer have or exercise any powers or duties with respect to the school district or with respect to the school business, operations, or assets of the school district; (2) all books and records of the trustees of schools and all moneys, securities, loanable funds, and other assets relating to the school business and affairs of the school district shall be transferred and delivered to the school board, allowing for a reasonable period of time not to exceed 90 days to liquidate any pooled investments; and (3) all legal title to and all right, title, and interest” in school land, buildings, and sites shall be deemed transferred from the TTO to LT’s school board. (Id.)

LT’s Withdrawal from the TTO

30. On June 22, 2021, LT learned that the TTO had not appealed from the Order. LT duly scheduled a meeting of the LT Board of Education (“LT Board”) with the required two-day notice and issued a Public Notice with the following action item: “Resolution Withdrawing from the Jurisdiction and Authority of the Lyons Township Trustees of Schools and Township School Treasurer and Appointment of Lyons Township High School District 204.” (Exhibit C.)

31. At the June 24, 2021 meeting of the LT Board, the LT Board duly approved a resolution to withdraw from the jurisdiction and authority of the TTO, effective July 1, 2021, and to appoint LT's own school treasurer ("the LT Resolution," Exhibit D).

32. The Resolution complies fully with the requirements for LT's withdrawal from the TTO set forth in the Act.

33. On June 25, 2021, LT transmitted a letter that attached the LT Resolution to the TTO by email and hand delivery. (Exhibit E.)

TTO Withholds \$6 Million in LT Liquid Assets

34. On June 28, 2021, the TTO informed LT that it intended to liquidate all of the assets in LT's agency account on July 1, 2021 but that the TTO intended to retain a portion of those liquidated assets belonging to LT: "The LTHS's Fund balance/liability within the Lyons Township Trustees of Schools' Agency Fund will be liquidated the morning of 07/01/2021 and remitted to three separate accounts. Two interest bearing accounts will be held by the Lyons Township Trustees of Schools for 90 days to facilitate the run-out and cover any unreconciled and/or unanticipated activity. Both accounts will be held at banking institutions within Lyons Township" (Exhibit F, p. 2.)

35. On June 30, 2021, the TTO informed LT that the forecasted ending fund balance for LT is \$47,731,790.72; that the TTO will transfer \$6,000,000.00 from these LT funds to two interest-bearing accounts; that the remaining balance of \$41,731,790.72 will be transferred to a bank chosen by LT; and that the TTO also will transfer to LT two certificates of deposit totaling \$500,000. (Exhibit G.)

36. On July 2, 2021, LT responded to the TTO's email. LT requested the immediate release of the \$6 million in withheld liquid assets: "Section 5/5-1(b) prohibits the TTO from retaining any assets of LT, and it requires the TTO to transmit all of LT's funds other than those funds needed

to be liquidated from any pooled investments. It is clear from your June 30 email that the \$6,000,000.00 the TTO has placed in two interest-bearing bank accounts are liquid assets. We believe the TTO has no right to continue to hold these funds, and LT requests they be transferred and delivered to LT immediately.” (Exhibit H.)

37. LT’s July 2, 2021 email also requested a full information and documentation concerning any open financial issues between the parties: “we are requesting a complete list of the financial issues, other than trailing checks, that remain to be resolved between the TTO and LT. I assume this is what you mean by ‘a run-out’ and ‘unreconciled activity,’ but we cannot confirm until we receive this information. We will need a thorough accounting, with full supporting documentation, of any financial issues between the TTO and LT.” (Id.)

38. The TTO never responded to LT’s July 2, 2021 email and never provided any information or documentation in response to LT’s requests.

39. On August 12, 2021, LT sent the TTO an email requesting a meeting to discuss the matters raised in LT’s July 2, 2021 email.

40. On August 16, 2021, the TTO responded with an email stating, “I agree that a meeting between our entities will be beneficial to the withdrawal process.” The TTO proposed several meeting dates ranging from September 8 to 15, 2021.

41. LT responded and set the meeting for September 9, 2021.

42. On September 8, 2021, the TTO cancelled the meeting with LT. Instead, the TTO suggested that LT attend a TTO Board meeting.

TTO Resolution to Take \$1.2 Million in Past Investment Earnings From LT

43. On September 15, 2021, the TTO sent LT and its member districts an email notifying them of a Special Meeting of the TTO Board on September 23, 2021. The email states, “One of the

agenda items at the September 23rd Board Meeting will be a Quarterly Average Fund Balance and Quarterly Interest Allocation Examination (FY1995 to FY2020) presentation. The Trustees asked that I perform this examination to ensure all the LTTO's Member Districts previously received fair and equitable quarterly interest distributions." FY stands for Fiscal Year. (Exhibit I.)

44. The September 15, 2021 email also states, "A summary of the examination is below (totals in parentheses indicated that the LTTO Member District was previously over-allocated quarterly interest and positive numbers indicate the LTTO Member District was previously under-allocated quarterly interest):" (id.)

Lyons Township Treasurer's Office	
Quarterly Average Fund Balance & Quarterly Interest Allocation Examination Summary	
FY1995 through FY2020	
LTTO Member District	TOTAL
Western Springs Elementary School District 101	\$ 25,153.31
LaGrange Elementary School District 102	\$ 104,620.65
Lyons Elementary School District 103	\$ 64,003.30
Summit Elementary School District 104	\$ (49,134.04)
LaGrange South Elementary School District 105	\$ (1,205.38)
LaGrange Highlands Elementary School District 106	\$ 343,469.16
West 40 - Intermediate Service Center #2 (D1065)	\$ (63,810.97)
West 40 - Learning Technology Center 1C (D1067)	\$ (7,016.32)
Pleasantdale Elementary School District 107	\$ 20,440.31
Willow Springs Elementary School District 108	\$ 15,525.54
Indian Springs Elementary School District 109	\$ 521,076.73
Lyons Township High School District 204	\$ (1,263,220.09)
LaGrange Area Department of Special Education (D2045)	\$ 43,588.18
Argo Summit High School District 217	\$ 246,509.62
Total Interest Allocated per General Ledger	\$ 135,440,860.69

45. According to the September 15, 2021 email, the TTO contends that LT received over \$1,263,220.09 in over-allocations of investment income from FY1995 – FY2020.

46. According to spreadsheets the TTO posted to its website, the TTO contends that for the period FY1995-2012, LT was overallocated investment earnings in the amount of \$1,262,945.09

(Exhibit J); and that for the period FY2013-2020, LT was overallocated investment earnings in the amount of \$275.00. (Exhibit K.)

47. On September 20, 2021, LT sent the TTO an email stating that the TTO's claim concerning the allocation of past investment earnings was decided in LT's favor in the 2013 Lawsuit. LT's email asserted that there was no basis for the TTO to attempt to revive that claim in the context of LT's withdrawal from the TTO. LT's email requested as follows: "LT asks the TTO to immediately release its \$6 million in liquid funds, which is being withheld illegally at the TTO; acknowledge in writing that Judge Esrig's decision bars the TTO from re-asserting its investment income earnings claim; and provide LT with the requested information and documentation in keeping with the fiduciary duty that Judge Esrig decided that you and the Trustees owe to LT and other TTO member districts." (Exhibit L.)

48. To date, LT has received no response to its September 20, 2021 email.

49. On September 21, 1995, at 5:00 p.m., the TTO posted an agenda for a Special Meeting of the TTO Board to be held on September 23, 2021 ("the Agenda," Exhibit M). The Agenda includes the following two action items under the heading "New Business" (id. p. 1-2):

5. Quarterly Average Fund Balance and Quarterly Interest Allocation Examination (1995 to FY2020)

6. Approval of Resolution 2022-01: A RESOLUTION OF TRUSTEES OF SCHOOLS OF (LYONS) TOWNSHIP 38 NORTH, RANGE 12 EAST, COOK COUNTY, ILLINOIS, TO APPROVE REVIEW AND ADJUSTMENT OF TTO BOOKS AND RECORDS TO ALLOCATE INVESTMENT INCOME

50. Resolution 2022-01 ("the TTO Resolution") that is referenced in the Agenda does not appear in the agenda packet or elsewhere on the TTO's website.

51. The Agenda also reflects the resignation of one of the Trustees effective September 22, 2021. This is the second TTO Trustee to resign from the TTO Board in the past four months.

COUNT I – DECLARATORY JUDGMENT

52. LT incorporates by reference the allegations in Paragraphs 1-51 above.

53. Section 5-1 of the School Code, as amended by the Act (“Section 5-1(b)”), applies to both the TTO and LT.

54. Section 5-1(b) sets forth the duties and responsibilities of the TTO and LT with respect to LT’s withdrawal from the TTO.

55. LT complied with all of Section 5-1(b)’s requirements for withdrawal from the TTO effective July 1, 2021.

56. LT properly and legally withdrew from the TTO effective July 1, 2021.

57. On July 1, 2021, all of LT’s assets held in its agency account at the TTO were liquidated assets. As of July 1, 2021, LT’s agency account had a fund balance of \$47,731,790.72.

58. On July 1, 2021, all of LT’s assets held in its agency account at the TTO were “moneys, securities, loanable funds, and other assets relating to the school business and affairs of the [LT] school district” within the meaning of Section 5.1(b)(2).

59. Section 5-1(b) required the TTO to transfer all of the moneys in LT’s agency account – i.e., the fund balance of \$47,731,790.72 – to LT on or about July 1, 2021.

60. Although Section 5-1(b) provides for “a reasonable period of time not to exceed 90 days to liquidate any pooled investments,” the TTO did not need to liquidate any pooled investment in order to transfer the full balance of LT’s agency account to LT on July 1, 2021. This 90-day period therefore is inapplicable to the TTO’s duty to transfer LT’s funds to LT.

61. Section 5-1(b) did not authorize the TTO to retain \$6 million in LT’s assets for what the TTO described as “a run-out” and “unreconciled activity.”

62. The TTO's retention of \$6 million in LT assets is in direct violation of the TTO's duties under Section 5.1(b).

63. In the Order, Judge Esrig held that under Section 8-16 of the School Code, the TTO may not spend a district's funds without authorization from the district. (Ex. A, p. 2, citing 105 ILCS 5/8-16).

64. Under Section 8-16 and Section 5-1(b), the TTO has no authority to make any deductions, adjustments, reductions, or reallocations that would reduce the balance of the \$6 million in withheld LT assets.

65. Because LT directed the TTO to pay the \$6 million in retained assets from the LT agency account to LT, and the TTO refused, the TTO's retention of these funds is in violation of Section 8-16.

66. Because the TTO has ignored the lawful instructions of LT and has acted against the interests of LT, the TTO's retention of \$6 million in LT assets violates the TTO's fiduciary duty to LT.

67. All remaining financial issues between LT and the TTO must be resolved through mutual discussion and exchanges of relevant information and documentation. To date, the TTO has refused to provide any such information and documentation to LT, despite LT's numerous requests, and the TTO cancelled and refused to reschedule a meeting between the parties to discuss any remaining financial issues.

68. Should the TTO believe that it is entitled to receive any money from LT, it must issue an invoice to LT and provide supporting documentation and information as reasonably requested and in accordance with the TTO's fiduciary duty to LT.

69. With respect to the TTO's claim that LT received an over-allocation of investment earnings from the TTO during the period FY1995-2012, that claim was resolved in favor of LT and against the TTO in the Order, which is a final judicial decision that binds the TTO and LT, both on the merits of the TTO's claim and through the granting of LT's affirmative defenses of the five-year statute of limitations and the doctrine of laches.

70. The TTO's present efforts to ignore the Order, re-visit the investment earnings claim, and grant itself the relief that Judge Esrig denied it constitutes both a violation of the Order and a breach of the TTO's fiduciary duty to LT.

71. Under Illinois law, res judicata is a judicially created doctrine resulting from the practical necessity that there be an end to litigation and that controversies once decided on their merits shall remain in repose. Thus, under the doctrine of res judicata, a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to a subsequent suit between the parties involving the same cause of action. The bar extends to what was actually decided in the first action, as well as those matters that could have been decided in that action. Res judicata embraces all grounds of recovery and defense involved and which might have been raised in the first action.

72. The TTO may not avoid the doctrine of res judicata simply because it intends to ignore the adverse ruling in the Order and take self-help, through the Resolution and its implementation, to recover funds on a claim that Judge Esrig rejected.

73. Section 5-1(b) does not authorize the TTO to conduct any "REVIEW AND ADJUSTMENT OF TTO BOOKS AND RECORDS TO ALLOCATE INVESTMENT INCOME."

74. As set forth in the TTO's September 15, 2021 email and the Agenda, the TTO intends to unlawfully take \$1,263,220.09 from the \$6,000,000 in LT assets being illegally retained at the TTO.

75. Should the TTO Board approve the Resolution at the special meeting scheduled for September 23, 2021 at 5:00 p.m., it would take the TTO's staff only a matter of minutes to make electronic entries in its computerized bookkeeping system to take \$1,263,220.09 from LT's funds and transfer those funds to the agency accounts of the other districts listed in the chart in the September 15, 2021 email.

76. In the event that the TTO were to unlawfully take money from LT's funds, it would be very difficult and onerous for LT to attempt to recover those funds. As Judge Esrig found in the Order, the TTO has no revenue sources of its own, and all of the money that it holds belongs to the school districts and not the TTO.

77. Furthermore, the 2013 Lawsuit, the TTO argued that LT's counterclaims against the TTO for financial irregularities had to be dismissed because all of the other member districts were necessary parties. Although the Court rejected the TTO's argument in the 2013 Lawsuit, LT should not be faced with the prospect of suing all or many of the other school districts, in addition to the TTO, in an attempt to recover money illegally taken from LT's agency fund.

78. Pursuant to 735 ILCS 5/2-701, which governs declaratory judgments in Illinois, "The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested."

79. An actual controversy exists between LT and the TTO concerning LT's right to receive from the TTO the \$6 million in withheld assets of LT; the binding effect of the Order and the applicability of the doctrine of res judicata on the TTO with respect to its investment earnings claim;

the TTO's duty to abide by the terms of the Order; and the inability of the TTO to take any money from LT's funds without express authorization from LT. Furthermore, LT has a clear interest in these controversies that involve \$6 million of its funds that LT must use for and safeguard for the benefit of LT's school community.

WHEREFORE, LT respectfully ask this Court to issue the following declaratory judgment:

A. Pursuant to the requirements of Section 5-1(b) of the School Code, the TTO must immediately provide the \$6,000,000 in withheld LT funds to LT.

B. Pursuant to Section 5-1(b) and Section 8-16 of the School Code, The TTO may not take any money from the LT assets being held at the TTO without the express written authorization of LT or an order of this Court.

C. Pursuant to the Order and/or the doctrine of res judicata, the TTO is barred from taking any action, whether on the Resolution or otherwise, that involves LT or its assets with respect to the claimed over-allocation of investment earnings to LT during the period of FY1995-2012.

D. Enter an order against the TTO's Trustees and Treasurer requiring them to show cause, if they can, for their failure to abide by the terms of the final judgment set forth in the Order.

COUNT II – INJUNCTIVE RELIEF/TEMPORARY RESTRAINING ORDER

80. LT incorporates by reference the allegations in Paragraphs 1-79 above.

81. Under Illinois law, there are three types of injunctive relief: a temporary restraining order ("TRO"), a preliminary injunction, and a permanent injunction.

82. A TRO issued without notice or hearing is a drastic remedy that may issue only in exceptional circumstances and for a brief duration. The purpose of a TRO is to preserve the status

quo until the Court can conduct a hearing to determine whether it should grant a preliminary injunction.

83. A preliminary injunction is not necessarily of brief duration because its primary purpose is to provide relief to an injured party and maintain the status quo until a trial on the merits.

84. When a TRO is issued after both notice and a hearing, the TRO is the functional equivalent of a preliminary injunction.

85. On the same day as the filing of this Complaint, LT will file a motion for a TRO with this Court.

86. A court may issue a permanent injunction as part of the relief granted in the final judgment.

87. A party is entitled to a TRO if it demonstrates (i) an ascertainable right in need of protection, (ii) a likelihood of success on the merits, (iii) irreparable harm in the absence of injunctive relief, and (iv) the lack of an adequate remedy at law. In addition, if the movant establishes a prima facie case, the court may also consider whether the balance of harms favors the grant or denial of injunctive relief.

88. LT's ascertainable right in need of protection are (a) LT's right under Section 5-1(b) of the School Code to receive all of its funds held at the TTO upon its departure from the TTO, including the \$6 million that the TTO withheld and refused to transfer, and (b) LT's right to enforcement of the Order and its judgment entered in favor of LT and against the TTO on the Investment Allocation Claim.

89. LT has a very strong likelihood of success on the merits. The Opinion is a clear and unavoidable rejection of the TTO's Investment Earnings Claim asserted in the 2013 Lawsuit, both on the merits of the claim and on limitations and laches grounds. Also, Section 5-1(b) plainly requires

the TTO to provide all liquidated LT assets to LT on July 1, 2021, which included the \$6 million that the TTO decided to withhold. The 90-period contained in Section 5-1(b) only applies to illiquid assets contained in the investment pool and therefore is inapplicable to LT's withdrawal from the TTO. Additionally, as Judge Esrig already held, Section 8-16 prevents the TTO from taking any money from LT's agency account without the express direction of LT.

90. The irreparable harm that LT will suffer in the absence of injunctive relief is the TTO's removal of money from LT's funds and the transfer of those funds to the agency accounts of certain other districts through the TTO's implementation of the Resolution and the transfers listed for Lt and the other districts in the September 15, 2021 email. Also, given the TTO's refusal to provide requested information and documentation to LT or even meet with LT, LT would suffer irreparable harm through the taking of funds by the TTO from LT's funds for any other reason. The harm would be irreparable because the transferred funds would be placed in the agency accounts of other districts, which cannot be spent without the direction of those districts under Section 8-16; because the TTO repeatedly took the position in the 2013 Lawsuit that it has no money of its own and therefore cannot be required to pay money to LT through the judicial process; and because the TTO took the position in the 2013 Lawsuit that it operated with a deficit over \$3 million and therefore could be considered insolvent and judgment proof.

91. In addition, LT would suffer irreparable harm from being denied the benefits of the decision in its favor on the Investment Allocation Claim, which would result in LT incurring additional attorneys' fees and potential delay in this lawsuit.

92. The lack of an adequate remedy at law stems from the need to enforce the Order, which enforcement is not simply a matter of a making a monetary award to LT. Furthermore, as with the issue of irreparable harm, the TTO's planned distribution of LT's funds through the Resolution to

other school district might prevent LT from obtaining relief in this lawsuit from the TTO, which would no longer have title to the LT funds taken from LT. Also, any monetary award of damages against the TTO may be difficult or impossible to enforce, given the TTO's lack of its own financial resources and the absence of a taxing base.

93. The balance of harms in this case weighs heavily in favor of LT in this case. A TRO entered in LT's favor would preserve millions of dollars in LT funds pending a determination of the parties' rights. On the other hand, the TTO would suffer no actual harm by being unable to immediately take LT's money and redistribute to other districts based on events that may have occurred as far back as 1995.

94. The public interest strongly favors an issuance of a TRO in favor of LT. Preserving \$6 million in money that the taxpayers allocated to LT – and not to the TTO or to any other district – and which LT has reported as part of its fund balance in numerous public reports is a compelling reason to prevent the TTO for taking these funds for any purpose other than LT's educational mission until a trial on the merits.

WHEREFORE, LT respectfully ask this Court to issue a TRO and/or preliminary injunction providing that:

A. Pursuant to Section 5-1(b) and Section 8-16 of the School Code, The TTO may not take any money from the \$6 million in LT assets being held at the TTO without the express written authorization from LT or an order of this Court.

B. Pursuant to the Order and the doctrine of res judicata, the TTO is barred from taking any action, whether on the Resolution or otherwise, that involves LT or its assets with respect to the claimed over-allocation of investment earnings to LT during the period FY1995-2012.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204

By s/Jay R. Hoffman
Its Attorney

Jay R. Hoffman
Hoffman Legal
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Chicago, IL 60601
(312) 899-0899
jay@hoffmanlegal.com
Attorney No. 34710

Exhibit E

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

FILED
9/22/2021 2:52 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH04844

LYONS TOWNSHIP H.S. DISTRICT 204,)		
)	No. 2021 CH 04844	14922613
Plaintiff,)		
)	Calendar 9	
v.)		
)	Judge Cecilia A. Horan	
TOWNSHIP TRUSTEES OF SCHOOLS)		
TOWNSHIP 38 NORTH, RANGE 12 EAST,)		
)		
Defendant.)		

**LT’S MOTION FOR TRO
(SUPPORTED BY VERIFIED COMPLAINT)**

Plaintiff Lyons Township High School District 204 (“LT”), by its counsel, hereby moves for the entry of a temporary restraining order (“TRO”), supported by a Verified Complaint, that provides LT with the following TRO order against the Defendant Township Trustees of Schools Township 38 North, Range 12 East (“the TTO”) to be entered on September 23, 2021, before 5:00 p.m.:

- A. Pursuant to Section 5-1(b) and Section 8-16 of the School Code, The TTO may not take any money from the \$6,000,000 in LT assets being held at the TTO without the express written authorization from LT or an order of this Court.
- B. Pursuant to the Judgment Order of Circuit Court Judge Esrig dated 5-21-2021 and the doctrine of res judicata, the TTO is barred from taking any action, whether on the TTO Resolution or otherwise, that involves LT or its assets with respect to the claimed over-allocation of investment earnings to LT during the period FY1995-2012.

Why There is a Real Emergency

LT is a public high school; the TTO is a treasurer’s organization that hold school district funds. LT was a member of the TTO and left the TTO’s organization effective July 1, 2021. The TTO still is holding \$6 million of LT’s money.

Yesterday, September 21, 2021, at 5:00 p.m., LT received the agenda for a special meeting of Board of Trustees to be held tomorrow, September 23, 2021, 5:00 p.m. This agenda states that the TTO Board will vote on a resolution that will take over \$1.2 million in funds belonging to LT and transfer those funds to other school districts. The TTO's transfer would be based on the TTO's claim that the TTO over-allocated investment earnings to LT starting in 1995. This is the same claim that Judge Esrig resolved in favor of LT and against the TTO in a judgment order issued on May 21, 2021 after a multi-month trial and 8 years of litigation between these same two parties.

Thus, not only is the TTO illegally withholding \$6,000,000 in funds belonging to LT, but in about 24 hours, the TTO could disburse a large portion of those funds to third parties in a manner that may be impossible to reverse later in the litigation. There are the added problems that the TTO manages school monies but has no taxing authority and thus may have no money of its own from which to pay any judgment; and the TTO claims to have a multi-million deficit, so it may be judgment-proof, as well. LT urgently needs this Court's help in freezing the funds at issue before the Thursday board meeting at 5:00 p.m. to prevent serious harm to LT and its school community.

LT will provide notice of this proceeding to the TTO and expects that the TTO will appear at any hearing on this motion through counsel. At the trial of the case that concluded in March 2021, the TTO had five attorneys from two law firms representing it, so it is no stranger to the legal process.

The Legal Standard

“The elements an applicant must establish to warrant the extraordinary remedy of a temporary restraining order are well-established. As variously stated, the movant must demonstrate (i) an ascertainable right in need of protection, (ii) a likelihood of success on the merits, (iii) irreparable harm in the absence of injunctive relief, and (iv) the lack of an adequate remedy at law. In addition, if the movant establishes a prima facie case, the court may also consider whether the balance of harms

favors the grant or denial of injunctive relief. *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042, ¶ 12, 49 N.E.3d 916.

The purpose of a temporary restraining order is to preserve the status quo until the court can arrange for a hearing on an application for a preliminary injunction or until the court can consider the case on its merits. Similarly, a preliminary injunction serves the purpose of maintaining the status quo until the case is disposed on its merits. *Bismarck Hotel Co. v. Sutherland*, 92 Ill. App. 3d 167, 175, 415 N.E.2d 517, 522-23 (1st Dist. 1980).

The Relevant Facts

The facts relevant to this Motion are set forth in the allegations and exhibits of the Verified Complaint that LT filed today, which is incorporated herein by reference as if set forth in this motion. All paragraph references are to the paragraphs in the Verified Complaint and its exhibits. Given the short time frame involved here, LT will summarize the facts in this Motion as follows:

LT is a high school district in LaGrange, Cook County, Illinois. (¶1) The TTO is a governmental body consisting of a three-member elected Board of Trustees who supervise a Treasurer and the Treasurer's office, including staff. The TTO's function is to receive, hold, manage, invest and account for tax funds and other revenues collected on behalf of the TTO's member districts. (¶2-3) The TTO has no input into an individual district's budgeting or spending decisions, and it may not spend a district's funds without authorization from the district. 105 ILCS 5/8-16. (¶6)

In 2013, the TTO sued LT based on several claims, one of which was the Investment Earnings Claim. This claim was that the TTO had over-allocated to LT over \$1.5 million in investment earnings on the pooled assets of LT and the other member school districts (about 12 others) from FY1995-2012. (¶14-15) The trial of the case lasted several months. In the May 2021 judgment order of Judge Esrig, the Court completely rejected the TTO's Investment Earnings

Claim and awarded the TTO no relief. The Judge based his decision on both the merits of the claim and the application of LT's defenses of a 5-year statute of limitations and laches. (¶18-22)

The TTO did not appeal from the adverse ruling. In total, the TTO had sought over \$6.5 million from LT and spent over \$4.2 million in attorneys' fees on the case. The TTO received only about \$700,000, most of which was for bills for LT's share of the TTO's legal fees in the ongoing case. (¶19-25)

The end of the 2013 Lawsuit allowed LT to make use of a state law passed in 2018 in order to withdraw from the TTO effective July 1, 2021. That law, which amended Section 5-1(b) of the School Code, required the TTO to immediately provide LT with all of its assets held at the TTO (in excess of \$47 million, not including real property) – unless some assets had to liquidated from the pooled funds, in which the transfer could be completed in up to 90 days. (¶26-33) Even though all of LT's assets were liquid as of July 1, 2021, the TTO withheld from transfer \$6,000,000 in LT assets, which it placed in two interest-bearing bank accounts. The TTO ignored LT's demands to release these funds and refused to provide documentation and information to LT or even meet with LT. (¶34-42)

Here is where the emergency begins. On September 15, 2021, the TTO issued an email stating that its Treasurer conducted an analysis of investment earning allocations dating back to 1995. The TTO claimed that LT was over-allocated \$1,263,220.09, all but \$275.00 of which relates to the FY1995-FY2012 time period (the same period in the 2013 Lawsuit). The TTO also claimed that the other districts were over- or under-allocated earnings in other, specified amounts. The email states only that this analysis would be discussed at the special meeting of the TTO Trustees set for September 23, 2021, at 5:00 p.m. (¶43-46)

However, yesterday, September 21, 2021, at 5:00 p.m., the TTO posted on its website an agenda that contains the following action items under the heading “New Business”:

5. Quarterly Average Fund Balance and Quarterly Interest Allocation Examination (1995 to FY2020)

6. Approval of Resolution 2022-01: A RESOLUTION OF TRUSTEES OF SCHOOLS OF (LYONS) TOWNSHIP 38 NORTH, RANGE 12 EAST, COOK COUNTY, ILLINOIS, TO APPROVE REVIEW AND ADJUSTMENT OF TTO BOOKS AND RECORDS TO ALLOCATE INVESTMENT INCOME

(¶49-50)

Based on the notice of the resolution, and the imminent taking of over \$1.2 million from LT’s assets, LT filed its Verified Complaint and this Motion the following day. LT respectfully requests a hearing with this Court prior to the September 23, 5:00 p.m. special meeting of the TTO Board.

Argument

This case involved involving an organization, the TTO, having a fiduciary duty to a school district, LT, but stubbornly refusing to abide by an adverse Court decision after 8 years of litigation – and about to illegally take over \$1 million in public funds in a manner that may not be possible to unwind. Under the very extreme circumstances of this case, LT meets the requirements for the issuance of a TRO.

LT’s ascertainable right in need of protection are (a) LT’s right under Section 5-1(b) of the School Code to receive all of its funds held at the TTO upon its departure from the TTO, including the \$6 million that the TTO withheld and refused to transfer, and (b) LT’s right to enforcement of the Order of Judge Esrig and its judgment entered in favor of LT and against the TTO on the Investment Allocation Claim.

LT has a very strong likelihood of success on the merits. The Order of Judge Esrig is a clear and unavoidable rejection of the TTO’s Investment Earnings Claim asserted in the 2013

Lawsuit, both on the merits of the claim and on limitations and laches grounds. Also, Section 5-1(b) plainly requires the TTO to provide all liquidated LT assets to LT on July 1, 2021, which included the \$6 million that the TTO decided to withhold. The 90-day period contained in Section 5-1(b) only applies to illiquid assets contained in the investment pool and therefore is inapplicable to LT's withdrawal from the TTO. Additionally, as Judge Esrig already held, Section 8-16 prevents the TTO from taking any money from LT's agency account without the express direction of LT.

The irreparable harm that LT will suffer in the absence of injunctive relief is the TTO's removal of money from LT's funds and the transfer of those funds to the agency accounts of certain other districts through the TTO's implementation of the TTO Resolution and the transfers listed for LT and the other districts in the September 15, 2021 email. Also, given the TTO's refusal to provide requested information and documentation to LT or even meet with LT, LT would suffer irreparable harm through the taking of funds by the TTO from LT's funds for any other financial reason that the TTO might later assert.

The harm would be irreparable to LT because the transferred funds would be placed in the agency accounts of other districts, which cannot be spent without the direction of those districts under Section 8-16; because the TTO repeatedly took the position in the 2013 Lawsuit that it has no money of its own and therefore cannot be required to pay money to LT through the judicial process; and because the TTO took the position in the 2013 Lawsuit that it operated with a deficit over \$3 million and therefore could be considered insolvent and judgment proof.

In addition, LT would suffer irreparable harm from being denied the benefits of the decision in its favor on the Investment Allocation Claim, which would result in LT incurring additional attorneys' fees and potential delay in this lawsuit.

The lack of an adequate remedy at law stems from the need to enforce the Order, which enforcement is not simply a matter of making a monetary award to LT. Furthermore, as with the issue of irreparable harm, the TTO's planned distribution of LT's funds through the TTO Resolution to other school district might prevent LT from obtaining relief in this lawsuit from the TTO, which would no longer have title to the LT funds taken from LT. Also, any monetary award of damages against the TTO may be difficult or impossible to enforce, given the TTO's lack of its own financial resources, the absence of a taxing base, and the TTO's large deficit.

The balance of harms in this case weighs heavily in favor of LT in this case. A TRO entered in LT's favor would preserve millions of dollars in LT funds pending a determination of the parties' rights and duties under the School Code and the Order. On the other hand, the TTO would suffer no actual harm by being unable to immediately take LT's money and redistribute to other districts based on events that may have occurred as far back as 1995.

In addition, The public interest strongly favors an issuance of a TRO in favor of LT. Preserving \$6 million in money that the taxpayers allocated to LT – and not to the TTO or to any other district – and which LT has reported as part of its fund balance in numerous public reports is a compelling reason to prevent the TTO from taking these funds for any purpose other than LT's educational mission until a trial on the merits.

Conclusion

LT urgently needs this Court's help. LT respectfully ask this Court to issue a TRO and/or preliminary injunction providing that:

- A. Pursuant to Section 5-1(b) and Section 8-16 of the School Code, The TTO may not take any money from the \$6,000,000 in LT assets being held at the TTO without the express written authorization from LT or an order of this Court.

B. Pursuant to the Judgment Order of Circuit Court Judge Esrig dated 5-21-2021 and the doctrine of res judicata, the TTO is barred from taking any action, whether on the TTO Resolution or otherwise, that involves LT or its assets with respect to the claimed over-allocation of investment earnings to LT during the period FY1995-2012.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204

By s/Jay R. Hoffman
Its Attorney

Jay R. Hoffman
Hoffman Legal
200 N. LaSalle St., Suite 1550
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(312) 899-0899
jay@hoffmanlegal.com
Attorney No. 34710

Exhibit F

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

LYONS TOWNSHIP HIGH SCHOOL,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2021 CH 04844
)	
TOWNSHIP TRUSTEES OF SCHOOLS,)	
)	
Defendant.)	

The report of proceeds before the Honorable Judge Cecelia A. Horan, via Zoom videoconference meeting, on October 6, 2021, at the hour of 10:02 a.m. Central Standard time.

REPORTER: PATRICK McPHERSON
NOTARY NO.: 885714

Page 2

APPEARANCES:
 HOFFMAN LEGAL
 BY: MR. JAY HOFFMAN
 (Via Videoconference)
 200 North LaSalle Street, Suite 1500
 Chicago, Illinois 60601
 Phone: (312) 889-0899
 On behalf of the Plaintiff, Lyons Township High Schools;

THE QUINLAN LAW FIRM
 BY: MR. WILLIAM QUINLAN
 MR. DAVID HUTCHINSON
 (Via Videoconference)
 233 South Wacker Drive, Suite 2210
 Chicago, Illinois 60606
 Phone: (312) 883-5500
 On behalf of the Defendant, Township Trustees of Schools;

MILLER CANFIELD LAW FIRM
 BY: MR. BARRY KALTENBACH
 (Via Videoconference)
 225 West Washington Street, Suite 2600
 Chicago, Illinois 60606
 (312) 460-4200
 On behalf of the Defendant, Township Trustees of Schools.

ALSO PRESENT, VIA VIDEOCONFERENCE:
 Mr. Brian Waterman, Superintendent of Lyons Township High Schools
 Mr. Kenneth Getty, Treasurer, Lyons Township
 Mr. Michael Theissan, Lyons Township Trustee & Board President
 Mr. Robert Skolnik, Reporter
 Ms. Greisbach, Paralegal, Quinlan Law Firm
 Liz Michaelowska, Former Law Clerk for Judge Horan
 Ms. Maxwell, Private Citizen (appeared briefly)

Page 4

1 THE COURT: Okay, good morning, everybody. I am
 2 Judge Horan.
 3 MR. HOFFMAN: Good morning, Your Honor, I am Jay
 4 Hoffman representing Lyons Township High School.
 5 THE COURT: Okay. I am going to take notes about
 6 who is here for today's hearing. We have a court
 7 reporter here. I see Ms. Maxwell, is that right?
 8 MS. MAXWELL: Yes.
 9 THE COURT: Okay. For Lyons Township High
 10 School, go ahead, Mr. Hoffman, yes?
 11 MR. HOFFMAN: Yes. I am here. There are no
 12 other attorneys. There are -- there is a box for
 13 Lyons Township High School, which is Dr. Brian
 14 Waterman, he is our party representative who will be
 15 here throughout the proceedings.
 16 There are also two other boxes, Your Honor,
 17 labeled witness and documents. Just so you know
 18 that's part of the set up that we have at the high
 19 school for witnesses to testify at the high school.
 20 This is the same set up that we used for the recent
 21 trial, and it makes it easier for the witnesses to
 22 testify from a conference room and see everything and
 23 the camera is all set up.
 24 THE COURT: Yes, okay.

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I N D E X

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1 MR. HOFFMAN: Thank you, Judge.
 2 THE COURT: All right. Other parties?
 3 MR. QUINLAN: Sure, Your Honor, William J.
 4 Quinlan and I am here with Barry Kaltenbach on behalf
 5 of the Township's Trustee's Office. David Hutchinson
 6 of our firm is Zoomed in separately, but I am in the
 7 same room with Mr. Kaltenbach.
 8 THE COURT: Is Mr. Kaltenbach a witness or an
 9 attorney?
 10 MR. QUINLAN: He is an attorney, sorry. I was
 11 just appearing on behalf of the attorneys. I can
 12 cover the witnesses now if Your Honor or a party
 13 representative is --
 14 THE COURT: So who is the other lawyer?
 15 MR. QUINLAN: Barry Kaltenbach.
 16 MR. KALTENBACH: Sorry, Your Honor, Barry
 17 Kaltenbach. I can turn on my own Zoom camera if you
 18 want, we thought this might be easier.
 19 THE COURT: That's okay. I thought you referred
 20 to somebody else.
 21 MR. KALTENBACH: No, sorry, that's me, Your
 22 Honor.
 23 THE COURT: Just the two gentlemen there, okay,
 24 are the TTO lawyers.

<p style="text-align: right;">Page 6</p> <p>1 MR. HUTCHINSON: Your Honor, David Hutchinson, 2 also on behalf of the TTO. 3 THE COURT: That's what I thought, okay. Okay. 4 And then who are the witnesses? 5 MR. QUINLAN: Sure. I have -- at least our 6 controlled witnesses, we have Ken Getty, who is the 7 Lyons Township Trustee Treasurer. And then I have 8 Michael Theissen, who is Zoomed in separately because 9 he is out of town at a conference, and he is the Lyons 10 Township Trustee Board President. 11 THE COURT: Okay. All right, very good. Does 12 that cover everybody who is here today? I see there 13 are a few people, Skolnik and Greisbach. 14 MR. QUINLAN: Oh, Greisbach is a paralegal that 15 works with the Quinlan Law Firm, or she is a colleague 16 of mine. And I have her on to the extent that I may 17 have some media challenges, depending on what 18 documents we may have to put up. I am just trying to 19 make it as smooth a transition as it is. This is a 20 big step for me to even be doing this. 21 THE COURT: All right. 22 MR. HOFFMAN: Your Honor, Bob Skolnick is a 23 reporter. 24 THE COURT: Okay.</p>	<p style="text-align: right;">Page 8</p> <p>1 is in the room with me as of now. This is my first 2 time. 3 THE COURT: Who asked you to be present today? 4 MS. MAXWELL: I actually have paperwork saying 5 that I need to be here. 6 THE COURT: Okay. Lawyers, who asked Ms. Maxwell 7 to be present today? 8 MR. QUINLAN: Not us. I don't know. I don't 9 think she is here for anything having to do with this 10 case, Your Honor. 11 MS. MAXWELL: Maybe they made a mistake, an error 12 because they signed me in and everything. I am sorry 13 for any inconvenience I caused anybody that is here 14 today. I am going to let them know that I am not 15 supposed to be here. 16 THE COURT: Whatever document you received; does 17 it have the name Lyons Township High School versus 18 Township Trustees at the top? 19 MS. MAXWELL: No, not at all. 20 THE COURT: Then you are probably in the wrong 21 room. 22 MS. MAXWELL: I am sorry about that. 23 THE COURT: That's okay. 24 MS. MAXWELL: Okay, I will let them know.</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. HOFFMAN: And then we also have Liz 2 Michaelowska. 3 THE COURT: Liz Michaelowska is my former law 4 clerk when I was sitting in mortgage foreclosure and 5 she asked to be present for anything that we have that 6 is interesting that is going on, so it is a learning 7 experience for her. I told her that she come and 8 participate today, not participate, but observe. 9 MR. HOFFMAN: Liz, welcome. 10 THE COURT: And we have a Ms. Maxwell. Ms. 11 Maxwell, can you unmute? 12 MS. MAXWELL: Can I -- don't hear me? 13 THE COURT: Yes. 14 MS. MAXWELL: Okay. 15 THE COURT: What is your role here today? 16 MS. MAXWELL: I am supposed to be on here 17 regarding my son. 18 THE COURT: Regarding your? 19 MS. MAXWELL: My son, my minor son. 20 THE COURT: Son? 21 MS. MAXWELL: Yes. 22 THE COURT: Who asked you to be present? 23 MS. MAXWELL: I am actually in downtown Chicago. 24 They have me on the Zoom, this is new to me. No one</p>	<p style="text-align: right;">Page 9</p> <p>1 THE COURT: Yes, maybe there is a different case 2 that you are supposed to be present for, okay? 3 MS. MAXWELL: Yes, I am going to let them know. 4 THE COURT: And then we have Mr. McPherson as the 5 Court reporter. Is that everybody? 6 ALL: Yes. 7 THE COURT: Very good. So we are here for a 8 motion for preliminary injunction on the matter that 9 we were here on last week, and this is going to be an 10 evidentiary hearing and there was also a motion to 11 transfer the case to Judge Esrig that I looked at. 12 Let me ask the parties this question, is it -- Ms. 13 Maxwell, I am going to put you in the waiting room, 14 okay? 15 Let me ask the parties this question, are you 16 seeking to move the case back to Judge Esrig for 17 determination of the preliminary injunction, or is it 18 post-preliminary injunction that you want to move the 19 case back to Judge Esrig for determination of the 20 issues? 21 MR. QUINLAN: I guess, Judge, I could speak on 22 behalf of the TTO. I know Mr. Kaltenbach filed that. 23 But our position would be given the common facts and 24 circumstances and given just the history of this case</p>

<p style="text-align: right;">Page 10</p> <p>1 that we would prefer -- not that we don't appreciate 2 the Court, we certainly do. Our motion was to 3 transfer it, which is why we filed immediately when 4 the TRO was filed to transfer it to Judge Esrig to 5 hear everything.</p> <p>6 THE COURT: And I don't take it personally, 7 counsel.</p> <p>8 MR. QUINLAN: No, the only point I am making is 9 it is just because of the facts and circumstances, and 10 we just think it might be easier for him to dispense 11 of it more simply given his history and background.</p> <p>12 THE COURT: Okay. And Mr. Hoffman, did you want 13 to respond to that?</p> <p>14 MR. HOFFMAN: Yes. We object to this motion. 15 The motion is filed, claimed that somehow LT did 16 something improper and we should have filed under the 17 old 2013 case. I think the TTO has abandoned that 18 argument and the reason is it is without merit.</p> <p>19 We have no ability to go back in under the 2013 20 case because the Court, Judge Esrig, lost jurisdiction 21 after 30 days of his final Order. In addition in 22 Order to withdraw from the TTO, we needed for all 23 proceedings in the prior case and any related matters, 24 it says it right in the statute to be done and over</p>	<p style="text-align: right;">Page 12</p> <p>1 get everything back to Judge Esrig and make this a big 2 motion for reconsideration, and we wish to avoid that. 3 Judge Esrig did not become our judge for life. The 4 law that the TTO cites in its reply brief is General 5 Order 1.3D. That involves transferring actions to 6 another department, division, or district. It doesn't 7 say anything about transferring it to a different 8 judge simply because that judge has heard a prior 9 lawsuit that has been resolved between the parties. 10 So we followed the right procedures. We filed in 11 the right division. Your Honor has already started 12 down the path of resolving this. We have a hearing 13 today and we respectfully ask that the motion be 14 denied.</p> <p>15 THE COURT: Mr. Quinlan, I know that you are 16 going to want to reply.</p> <p>17 MR. QUINLAN: Judge, not too much. You know, 18 this isn't something that I am going to die on the 19 hill on. I am familiar with the Court's reputation. 20 Obviously, I think you can be fair. I just for the 21 reasons I sort of outlaid, I don't think I need to go 22 into it. I appreciate we have members of the media 23 here, but I am not looking to make any sound bites or 24 anything other than I think you understand our</p>
<p style="text-align: right;">Page 11</p> <p>1 with, so that's an absolute no-go. 2 Now, what I think their new position is, is that 3 they think it would be more convenient for the parties 4 and the administration of justice to transfer this 5 case to Judge Esrig, and we do disagree with that for 6 a number of good reasons.</p> <p>7 Number one, there are new disputes at issue that 8 extend well beyond what was at issue in front of Judge 9 Esrig. We now have the separation of the departure of 10 the LT from the TTO's system. We have the TTO 11 retaining \$6 million dollars of our funds in violation 12 of the statute.</p> <p>13 We have an attempt to reassert a claim that Judge 14 Esrig decided. And look, Your Honor is perfectly 15 capable of understanding what Judge Esrig decided. He 16 wrote a 40-page opinion, that's why judges write 17 written opinions. It is very clear what he decided.</p> <p>18 It's concerning that the TTO's response to the 19 preliminary injunction motion attempts to rely on all 20 kinds of interlocutory arguments and statements that 21 preceded the decision by Judge Esrig that were made 22 during the trial and prior to the trial. Sometimes 23 statements that I made during argument. 24 I think what the TTO is really trying to do is</p>	<p style="text-align: right;">Page 13</p> <p>1 position. Thank you.</p> <p>2 THE COURT: Okay. All right. I reviewed the 3 materials and I think there are new facts here that 4 were not present in the last case that was pending 5 before Judge Esrig. Specifically, a lot of things 6 happened post-judgment, and also, I understand Judge 7 Esrig does have a lot of familiarity with the case 8 like Mr. Hoffman said. That doesn't mean that I can't 9 get myself up to speed and become very familiar with 10 the facts.</p> <p>11 So it sounds like it is really more of a 12 convenience issue for the Trustee versus a real legal 13 issue, and so for that reason, respectfully, I am 14 going to deny the motion and I will keep the case 15 here.</p> <p>16 MR. QUINLAN: Judge, if I may?</p> <p>17 THE COURT: Yes.</p> <p>18 MR. QUINLAN: Sure, we have two other motions we 19 filed, and at least I believe they were served on your 20 clerk early or at least I hope so.</p> <p>21 One is we filed a motion to dismiss the Complaint 22 that was filed by Lyons Township. I believe that was 23 filed yesterday and hopefully served on -- I know Mr. 24 Hutchinson can speak to it better than I do. We</p>

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1 obviously had some moving pieces. I can speak to the
 2 actual motion, but at least the procedure. I know it
 3 was served on all the parties and I believe on your
 4 law clerk in pursuant to your standing Order as well.
 5 There was also a motion to strike the "agreed
 6 Order" because I know there was some confusion with
 7 the transcript where there were lawyers, Mr.
 8 Kaltenbach could speak to it better than me, it was
 9 misidentified in the transcript. What he said. He
 10 was interposed where it said Kaltenbach it was
 11 supposed to be Hoffman, and the like.
 12 And so there is a dispute with respect to at
 13 least one word. I appreciate that depending on how
 14 this hearing comes out, that may not be an issue and
 15 the Court, you know obviously after the hearing can
 16 make its own determination. But we did file those, at
 17 least to be on record with it.
 18 With respect to the motion to dismiss, it
 19 obviously hasn't been briefed. We are on a short
 20 aggressive timetable. I am happy to address at least
 21 in broad terms the merits of that motion if the Court
 22 would like, and why we think that the Complaint on its
 23 face doesn't say the cause of action. We did it under
 24 vote, 2615 and 2619.

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1 THE COURT: Okay, thank you. I have not seen it.
 2 I don't know if my clerks ever received it, but if
 3 they have it has not been sent to me, so -- which
 4 isn't unusual or -- typically I don't review the
 5 motions until they are up for presentment.
 6 MR. QUINLAN: We did note it up for today, Your
 7 Honor. I mean I appreciate it. We filed it
 8 yesterday. Just so you know we did do that.
 9 THE COURT: Jon, did we receive those motion?
 10 Jon and I talked about this case beforehand, you know
 11 before this.
 12 THE CLERK: I do see a motion to dismiss sent
 13 this morning.
 14 THE COURT: Sent this morning, okay.
 15 THE CLERK: They might have received a file, sent
 16 copy today.
 17 MR. HOFFMAN: Your Honor, I received from TTO's
 18 counsel yesterday at 4:15 p.m., a motion to dismiss.
 19 I received at 8:30 this morning, a motion to strike
 20 the agreed Order from September 23rd of 2021 that the
 21 Court entered. I don't believe it would be
 22 appropriate to have any presentation or discussion on
 23 the motion to dismiss.
 24 I will tell you it is our view that that motion

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1 lacks merit and is in our view interposed in bad faith
 2 and without legitimate legal or factual grounds, but
 3 we will respond to that in due course.
 4 I don't think that last minute filing should be a
 5 basis to delay or undermine the proceeding that we
 6 scheduled several weeks ago for today. So I don't
 7 think there should be any procedural maneuvering to
 8 avoid this hearing that we are all prepared for.
 9 THE COURT: Yes, and I am not going to address
 10 any of the merits of the motion to dismiss today.
 11 Obviously, I have not looked at it yet, so it is not -
 12 - I am not going to make any ruling or even address --
 13 we are not going to talk about that today.
 14 What about this other motion to -- with regard to
 15 the Order, it is called agreed Order; again, I have
 16 not seen this motion. But my question, I guess, it is
 17 an agreed Order that was entered by me on September
 18 23, 2021, is that the agreed Order we are talking
 19 about?
 20 MR. KALTENBACH: Yes, Your Honor, Barry
 21 Kaltenbach. Yes, it is. And the issue, Your Honor,
 22 is really the word "untouched" in that first
 23 paragraph. Neither Mr. Quinlan nor I agreed to the
 24 word "untouched" during the hearing. The transcript

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1 reflects that I agreed to that, but that was actually
 2 Mr. Hoffman agreeing to that, and as Mr. Hoffman
 3 acknowledged when he sent the transcript to the Court,
 4 it contained errors.
 5 I don't know if that's what he was relying on or
 6 if that's what the Court was relying on, but we
 7 advised Mr. Hoffman we did not agree to the word
 8 "untouched" in the Order and that's because I think
 9 that's really inappropriate language of injunction for
 10 an intangible object like money in an account.
 11 THE COURT: Can I ask a question. I am sorry. I
 12 know everybody is fired up.
 13 MR. HOFFMAN: I just want to be able to speak to
 14 it at some point.
 15 THE COURT: Yes, of course. I am not going to
 16 cut anybody off. I will let everybody get their word
 17 in, okay? We know that's a euphemism for unmoved,
 18 "un" whatever, right? Everybody understands that. Is
 19 there really an argument that you can do something
 20 with the money?
 21 MR. KALTENBACH: Well, Your Honor, we certainly
 22 have agreed to leave it in those two accounts until
 23 further Order of court. I just think we were
 24 concerned that the work "untouched" when it is in

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1 something that is intangible is kind of a colloquial
 2 phrase, that we did not feel comfortable. We are
 3 litigating in this case over what the word "liquidate"
 4 means. So I did not want there to be any confusion
 5 there. For example, it is an interest-bearing
 6 account, so the funds will be touched when interest
 7 gets into the account. Object to an audit, that sort
 8 of stuff.
 9 THE COURT: Okay. What word would you propose to
 10 -- should replace the word "untouched"?
 11 MR. KALTENBACH: I would just cross out the word
 12 "untouched" and say that the money will remain in the
 13 accounts until further Order of Court.
 14 THE COURT: Mr. Hoffman, go ahead.
 15 MR. HOFFMAN: Okay. We have a transcript of the
 16 hearing. And I provided it to the Court weeks ago.
 17 And the motion -- the motion that they filed this
 18 morning is incorrect in important respects, and I
 19 would like to remind the Court that during the hearing
 20 I said that we might have a problem with the Order
 21 because in the 2013 lawsuit I had numerous instances
 22 with Mr. Kaltenbach. In particular of having a court
 23 hearing, and then trying to reduce the Court's
 24 decision to an Order and having him trying to change

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1 the wording to gain an advantage, and then having to
 2 go back in front of the Judge to argue about it, and
 3 then ultimately get the Order that I wrote.
 4 Now what happened at the hearing was I said we
 5 could have a problem with this, let's talk about the
 6 precise wording.
 7 THE COURT: I remember.
 8 MR. HOFFMAN: And what happened in the motion
 9 that they filed this morning, it says in paragraph 5,
 10 about the hearing it says: Counsel for LT wanted the
 11 \$6 million to remain "untouched". That is a
 12 misrepresentation of the record.
 13 In fact, it was Your Honor, on page 26, line 16
 14 of the transcript who said --
 15 THE COURT: I don't have the transcript in front
 16 of me.
 17 MR. HOFFMAN: Your Honor, if you enable screen
 18 sharing, I can show it to everyone.
 19 THE COURT: Okay. I have just done that.
 20 MR. HOFFMAN: Sure, why not.
 21 THE COURT: I guess, you know --
 22 MR. HOFFMAN: So here is --
 23 THE COURT: All right. I will let you --
 24 MR. HOFFMAN: Let me just finish my thought.

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1 THE COURT: Yes, sure.
 2 MR. HOFFMAN: If you don't mind.
 3 THE COURT: Uh-hum.
 4 MR. HOFFMAN: So we are just talking about this
 5 word "untouched". But there is actually three issues
 6 that the TTO raised about the Order, okay. There are
 7 three of them.
 8 Number one, they sent me an email after the
 9 hearing. Mr. Hutchinson sent me an email after the
 10 hearing and he said: In light of the Court's Order
 11 today, our position is that the Order should be clear,
 12 that the parties agree to waive the 90-day provision
 13 of the statute regarding the disbursement of funds
 14 since this is not going to be resolved before the
 15 28th.
 16 And my response to that, and I wrote him an
 17 extensive email and I said: That's not what we
 18 discussed. It was never agreed to in court and why
 19 are you demanding this now after the hearing?
 20 So the motion that they filed this morning
 21 doesn't demand that he add it to the Order apparently,
 22 they have given up on that. What the motion also
 23 says, even though Mr. Kaltenbach says, all we are
 24 arguing over is the word "untouched", that's not what

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1 their motion says. And again, they keep changing
 2 their positions.
 3 What it says in this is it says: The Order
 4 should also say -- this is in paragraph 14 of their
 5 motion. That the money would stay in the accounts and
 6 then it was regardless of the substance of any
 7 Resolution passed at the September 23, 2021, special
 8 meeting of the TTO Board of Trustees. That we talked
 9 about. That is in the transcript.
 10 And then they say it has to add, or any action
 11 taken to implement any Resolution. And it says
 12 emphasis representing TTO's proposed addition. Now, I
 13 don't know why Mr. Kaltenbach filed a motion this
 14 morning and now apparently has abandoned that position
 15 in front of Your Honor, maybe he is trying to sound
 16 more reasonable.
 17 But, the fact of the matter is, this was also the
 18 reason they wouldn't agree to the Order because I
 19 wouldn't agree to add this additional language because
 20 it was never discussed at the hearing. And if you
 21 look through this transcript, it says with respect to
 22 the special meeting, we talk about right here on page
 23 27, line 24, when I was taking notes, true.
 24 What Your Honor said, this is the top of page 28.

<p style="text-align: right;">Page 22</p> <p>1 What Your Honor said was: Regardless of the 2 Resolution, any Resolution that may be passed tonight. 3 That's what I have in my notes. And then Kaltenbach: 4 Correct, the money will remain regardless of what 5 happens tonight. The Judge is: Let's put that in the 6 Order. 7 So there is no discussion of this additional 8 language, or of any action taken to implement any 9 Resolution. The motion -- again, Mr. Kaltenbach can 10 say whether he is abandoning that based on a motion he 11 filed this morning or not. Now let's get to the word 12 "untouched". Again, if we look on page 26, the upper 13 left box, line -- we have Mr. Kaltenbach on line 12, 14 talking about the funds that will remain in those 15 until further Order of the Court. 16 THE COURT: Untouched, right? Okay, Mr. Hoffman, 17 is that suitable? And then there is a further 18 discussion on line 23. It is actually Mr. Hoffman: 19 Well, I think we talked about is that number one, they 20 will remain untouched until further Order of the 21 Court. I was making sure that we read it back 22 correctly, what Your Honor said. 23 And then there is no objection whatsoever. They 24 now claim, oh, this is colloquial language. Well,</p>	<p style="text-align: right;">Page 24</p> <p>1 Well, that's exactly it, they are not supposed to 2 use this money. It is supposed to stay there 3 untouched. And the fact that they are objecting to 4 that language raises major concerns for us. The final 5 point I will make is their motion in paragraph 16 says 6 that they would be unable to audit these accounts 7 because an audit would touch them. Again, that's an 8 absurd argument. An audit counts money. 9 So again, this is just gamesmanship and games 10 play. Your Honor proposed the language, I repeated 11 it, nobody had an objection to it. It was agreed to 12 and just because they changed their mind later doesn't 13 mean that we strike para -- they are asking to strike 14 in this motion, strike paragraph 1 in its entirety of 15 the Order, which is insane. 16 THE COURT: I mean, doesn't everybody here 17 understand what we mean? 18 MR. KALTENBACH: Your Honor, I believe -- I am 19 sorry, may I have a moment? 20 THE COURT: Go ahead, you may have a moment. 21 MR. KALTENBACH: Thank you, Judge. First of all 22 I do want to clarify on the transcript we are all 23 looking at, at the bottom of page 26, top of page 27, 24 it juxtaposes myself and Mr. Hoffman. Mr. Hoffman</p>
<p style="text-align: right;">Page 23</p> <p>1 Your Honor proposed it. Nobody -- I repeated it, 2 nobody objected to it, nobody voiced any of the 3 objections that they are raising in this morning's 4 motion to it, or that they raised with me after the 5 hearing. 6 And then I want to point out one more thing of 7 why it is important? What's the big deal? Who cares 8 about the word "untouched"? Well, here is why. First 9 of all in their motion in paragraph 11, they say it is 10 ambiguous because the TTO, for instance, could be 11 found in breach of this enjoining provision by adding 12 money to these accounts as the \$6 million in those 13 accounts would have been touched. Well, that's an 14 absurd argument there. They're not going to add money 15 to this. 16 If they add money to this, they can write us a 17 letter and we can agree to amend the Order to allow 18 them to give us more money. That's not going to 19 happen. And then they say, the next paragraph, 20 paragraph 12 of their motion says: Indeed, this 21 provision seemingly prohibits TTO from using either of 22 these two bank accounts at any time for any reason, 23 regardless of such use's relationship or relevance to 24 the \$6 million in dispute in this case.</p>	<p style="text-align: right;">Page 25</p> <p>1 said at the bottom of 26: Well, I think what we 2 talked about is that number one, they will remain 3 untouched until further of Order of Court. That was 4 Mr. Hoffman, that was not me. I will swear understand 5 oath if I need to. That it was me that said, 6 continuing: They will remain in the accounts. We are 7 not moving them out of the bank account. 8 Then Mr. Hoffman said, I believe: The same 9 accounts until further Order of the Court. I said: 10 Yes. And I said: The TTO -- I am sorry. Mr. Hoffman 11 said: The TTO will take no action to implement any 12 Resolution passed at the special meeting tonight. Mr. 13 Quinlan said: That's not what we agreed on. And I 14 said: No, right. 15 So we did not agree ever to the word "untouched". 16 I think our position is this, simply, Your Honor, 17 respectfully, the Court can enter a TRO with the word 18 untouched in it if it wishes to. Our point is just 19 that neither Mr. Hoffman -- I am sorry. Neither Mr. 20 Quinlan nor I ever agreed to that word in the Order. 21 Mr. Hutchinson told that to Mr. Hoffman on the phone 22 that afternoon. I emailed that to Mr. Hoffman and to 23 the Court. So I don't think it is appropriate that 24 that is in there as an agreed Order.</p>

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1 Now, to answer Your Honor's question, I thank you
 2 for indulging me. We agreed that that -- the \$3
 3 million is going to be in each of those accounts until
 4 further Order of Court. That's what we agreed to.
 5 That's still where it is today. To say it is absurd
 6 we are not going to put more money into those
 7 accounts, as far as I understand, more money is
 8 already in those accounts as of this morning, Your
 9 Honor.
 10 Interest has been in those accounts already this
 11 morning. So I mean I -- they are going to stay there
 12 until further Order of Court. That money is not --
 13 THE COURT: Right, yes, but the bank who adds the
 14 interest isn't a party to this motion. So I guess we
 15 need to clarify that -- you know, I think everybody
 16 understands the -- at least the -- you know, the
 17 message behind the Order, right? That the trust, the
 18 Trustees, the TTO is not going to move the money.
 19 They are not going to delete the money. Not going to
 20 comingle it. Not going to do anything to the money.
 21 It is going to stay where it is, and yes, of
 22 course, it is going to accrue interest since it is an
 23 interest-bearing account. The bank will add the
 24 interest, but the Trustees won't touch the money.

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1 Isn't that what we all understand?
 2 MR. HOFFMAN: Yes, Your Honor, we do understand
 3 that. And again, Your Honor, Mr. Kaltenbach
 4 misrepresents the record because it was you, the
 5 Judge, who heard all of the proceedings and
 6 discussions and used the word "untouched". All of
 7 these objections that they were making to that were
 8 never voiced at the hearing. This is all new stuff.
 9 THE COURT: Right. There was a problem with the
 10 word before. I will tell you, everybody, my tendency
 11 is to leave the word in there and add language that
 12 says untouched by the Trustee, by the TTO.
 13 MR. HOFFMAN: That's fine. That works for us.
 14 That's what we are trying to accomplish. Everyone
 15 understands that.
 16 MR. KALTENBACH: Your Honor, if I may, those two
 17 bank accounts are part of a fund of a couple of
 18 hundred million dollars called the agency fund that
 19 consists of pooled and comingled money for all of the
 20 districts. So it is already comingled, it is just
 21 these two bank accounts, we decided, okay, we are not
 22 going to take the \$3 million out of either of the two
 23 bank accounts.
 24 THE COURT: So is there money besides the \$3

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1 million plus interest in these two bank accounts?
 2 MR. KALTENBACH: That's the money in the two bank
 3 accounts, is the \$3 million, but that money doesn't
 4 belong to District 204 in and of itself. They don't
 5 have a unique claim to that money any more than they
 6 have a unique -- to those accounts anymore than they
 7 have unique claim to any of the 250 investment
 8 vehicles that my client has.
 9 MR. HOFFMAN: That's absolutely wrong. And they
 10 know it. they took money from our individual agency
 11 account. Our account for LT and they took most of it
 12 and sent it to us and they kept \$6 million in
 13 segregated accounts.
 14 This argument that Mr. Kaltenbach is making that
 15 it is all in one giant stomach, that oh, it is all
 16 part of a comingled investment pool is utterly false.
 17 And all you have to do to see that is read the
 18 findings of fact that Judge Esrig made where he said
 19 every school district has an account with a precise
 20 balance. That's what's in the Order. That's what
 21 Judge Esrig found.
 22 So the notion that it is already comingled, no.
 23 There is a series of funds that the TTO manages, but
 24 this is --

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1 THE COURT: I get it. I get it. I understand.
 2 So in that -- I am going to leave the language as it
 3 is. If the parties want to remove the word "agreed"
 4 and add the word "untouched", add the phrase "by the
 5 TTO", then that would be my Order.
 6 MR. HOFFMAN: We may again, we have to write an
 7 Order now about this ruling. The motion is denied,
 8 the parties have --
 9 THE COURT: So the motion is denied, but the
 10 Order will be amended as follows. The word "agreed"
 11 at the top will be removed or deleted and the phrase
 12 "by the TTO" will be inserted after the word
 13 "untouched".
 14 MR. HOFFMAN: By the TTO or its Trustee. Or its
 15 Trustees or Treasurer.
 16 THE COURT: Or its agents, however you want to
 17 phrase it, yes. We can't be cavalier, right?
 18 MR. HOFFMAN: We have to say by the TTO or its
 19 Trustees, Treasurer, or Agents; is that acceptable?
 20 THE COURT: Yes.
 21 MR. HOFFMAN: Thank you.,
 22 MR. QUINLAN: Judge, look I have been quiet.
 23 MR. HOFFMAN: Your Honor, wait a minute. I have
 24 point of Order. I object, again, to two lawyers for

<p style="text-align: right;">Page 30</p> <p>1 the TTO, who are a single party having two attorneys 2 argue a motion. This is abusive behavior. They did 3 this all through the trial. It is unfair and wrong, 4 and I ask that the Court disallow this now. 5 THE COURT: Okay. So let me address my question 6 to Mr. Kaltenbach. Is there a reason why you feel 7 like you client somehow got its hands on the money? 8 This is the money in dispute, and in fact, I mean it 9 seems like not even all of it is in dispute. Is there 10 some reason why you need to have -- do something with 11 the money? 12 MR. KALTENBACH: Well, Your Honor, I would say, I 13 guess, first of all it -- our hands are already on the 14 money because it is within the agent -- 15 THE COURT: In your account. 16 MR. KALTENBACH: That we manage, it is our 17 account, it is not their account. 18 THE COURT: Right, right. 19 MR. KALTENBACH: Our bank account, and it is our 20 job as elected officials to take all of these funds 21 and invest them. So we do have an issue with leaving 22 \$6 million dollars in two checking accounts for one 23 day of Resolution to happen when there is \$200 24 million, we are trying to invest and we think -- you</p>	<p style="text-align: right;">Page 32</p> <p>1 THE COURT: Yes, it is not an issue for today. 2 MR. KALTENBACH: Right. 3 THE COURT: But your concern can be addressed, 4 right? 5 MR. KALTENBACH: I think it -- on that issue, 6 except, Your Honor, I guess, I would still have the 7 issue of respectively, I don't know that it is 8 appropriate for any Court to instruct the elected 9 officials how, you know, not to invest the money as 10 they believe they have a fiduciary obligation as to 11 invest the money. 12 MR. HOFFMAN: May I respond to that because that 13 is not a good faith argument, and here is why. The 14 TTO's response to the motion for preliminary 15 injunction attached an investment report at the TTO. 16 And what the investment report shows is that as of 17 that report they attached, the TTO had \$55 million 18 dollars in money market accounts that are exactly like 19 the \$6 million dollar money market accounts that are 20 issued in this case. 21 They can take \$6 million dollars out of that 22 money market and invest it and end up with exactly the 23 same investment mix. The notion -- this is an 24 organization that can't buy Amazon stock and invest it</p>
<p style="text-align: right;">Page 31</p> <p>1 know, our Trustee at some point may say, hey, we can 2 invest that a little bit better than throwing it into 3 a checking account. 4 THE COURT: Can't that issue be addressed by a 5 bond? 6 MR. HOFFMAN: Your Honor, may I? We already have 7 -- 8 THE COURT: Mr. Hoffman, I have a question. 9 MR. HOFFMAN: I am sorry. 10 THE COURT: Addressed to Mr. Kaltenbach. 11 MR. KALTENBACH: You mean District 204 post a 12 bond in support of the TRO, Your Honor? 13 THE COURT: Yes. 14 MR. KALTENBACH: I guess if they want to post a 15 \$6 million dollar bond, I need more than that. 16 THE COURT: Oh, it wouldn't be a \$6 million 17 dollar bond. It would be whatever theoretically the 18 investment income would be during the time of however 19 long it takes us to resolve this issue. Right? I 20 mean, we would have to ask them. 21 MR. KALTENBACH: Yes, Your Honor, they are asking 22 us to freeze the \$6 million as of right now, but yeah, 23 I guess, Your Honor, we would have to sit down and try 24 to figure out what the bond would be.</p>	<p style="text-align: right;">Page 33</p> <p>1 in anything but the absolute most conservative way. 2 So 27 percent as of that report of their investment 3 mix is in mu market accounts just like the ones that 4 issue here. 5 And so for them so say, oh, well we can't invest 6 this money is absurd because they have tens and tens 7 of millions of other dollars invested in exactly the 8 same way and all they would have to do is shift \$6 9 million dollars from another bank to achieve the exact 10 same 20 percent investment mix. 11 So the argument that Mr. Kaltenbach makes is 12 really not consistent with the facts that his own 13 client has presented to the Court. 14 THE COURT: All right. So everybody understands. 15 The money will not be touched. It will be frozen in 16 the accounts; it will not be otherwise invested. It 17 will not move from those accounts, okay, for now. All 18 right. And that's my ruling. 19 MR. QUINLAN: Understood, Your Honor. 20 THE COURT: All right, thanks everybody. Okay. 21 So let's move on. Does that address everything 22 preliminarily with regard to the issue that we are 23 here for today? 24 MR. HOFFMAN: It does, Your Honor.</p>

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1 THE COURT: Okay.

2 MR. QUINLAN: I think so. I mean there are --

3 look, I don't want to prolong this any longer than it

4 needs to be, and I appreciate that we are arguing

5 about something that will hopefully will be moot when

6 we present evidence, but you know, obviously I am not

7 trying to speak loudest.

8 I am not trying to speak last, but you know, the

9 issue of political question is obviously something

10 that the Court is going to have to deal with when it

11 goes to the heart of what the legislature and activist

12 body to do and with these folks. I have taken an oath

13 in what they were, you know, elected by residents of

14 204 among other parts of Lyons Township.

15 You know, we can address that, and I think that

16 is something that obviously goes to heart of whether

17 or not any injunction on that issue. And we can

18 address that with the witnesses as well, Your Honor.

19 I just -- you know, however y9ou want to handle it. I

20 am not, again, trying to prolong it. I am not trying

21 to shout loudly. I take (indiscernible) very

22 seriously. But I do want to raise that that is

23 certainly an issue that was raised --

24 THE COURT: But there is no claim that the

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1 statute is unconstitutional, is there?

2 MR. QUINLAN: No. It is two separate issues,

3 Your Honor. And that actually gets to it. Lyons

4 Township 204 or any citizen in the State of Illinois

5 can argue the statute is unconstitutional. What

6 they're trying to get you to do is interfere in a

7 government legislative body and manage and direct

8 that, which gets to the part of a political question

9 is.

10 THE COURT: Well, I understand the argument, but

11 I think it is -- isn't it a matter of interpretation

12 of the statute?

13 MR. QUINLAN: Look, obviously, you know, we are

14 lawyers and we are going to make arguments and I am

15 not trying to be difficult, but no, I mean I can cite

16 that there is a case from 1987 called Arnold v.

17 Englebright and that's at 164 IL app 3rd 704,707 which

18 says: Discretionary acts of a public official in

19 exercising -- it says, "his" here of course, which

20 shows you the time that we are dealing with. His

21 duties are not subject to review by the judiciary and

22 injunction action.

23 An exception to this rule issue arises in a case

24 when a public official's acts are arbitrary,

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1 capricious, and he abuses his discretion or for its

2 own personal interest. Additionally, injunction

3 relief will either control discretionary actions of

4 public officials if fraud, corruption or gross

5 injustice.

6 So it is a different standard when we are talking

7 about a political question here. And there is another

8 case from -- it is actually the Trustees of Schools,

9 School Directors at District No. 2 where they say

10 courts have no supervisory powers to correct errors of

11 judgment that have been committed during the exercise

12 of discretionary acts of a public official.

13 And here they quote: If the duty of the county

14 superintendent on the hearing of appeals to

15 investigate and determine whether the proposed change

16 will be in the best interest of the district affected

17 of which he or she is elected, then thus the statute

18 provides its action shall be binding, is vested with

19 discretion to determine what is best for the people

20 and the cause of education.

21 This rule is well established that when bp

22 officers are so invested with discretionary powers a

23 court of equity will not interfere to control or

24 review the exercise of that power unless fraud,

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1 corruption, oppression, or gross injustice is plainly

2 shown.

3 A court of equity cannot sit as an appellate

4 tribunal to review the exercise of judgment where

5 there is no gross of use of power and the law does not

6 contemplate any supervisory power in the Court for

7 purposes of correcting errors of judgment.

8 THE COURT: What is your argument? That if the

9 Trustee decides that he wants to invest this money in

10 a different way other than to leave it in these bank

11 accounts that the Court can't interfere with that; is

12 that the argument?

13 MR. QUINLAN: The argument, and if I can just

14 reframe it, I am not trying to be difficult and I am

15 not trying to prolong this.

16 THE COURT: go ahead, I want to hear you.

17 MR. QUINLAN: Sure, sure. So the Township

18 Trustee's Office exists, Your Honor, and I don't know

19 how well this has been laid out, but what it is, is an

20 economy of scale. The Trustees are elected from all

21 of the area of Lyons Township, so you have 204 and we

22 have 12 other school districts.

23 When the Treasurer, the Cook County Treasurer

24 collects that, when Maria Pappas's office collects

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1 that, that money is sent to the Township Trustee's
 2 Office. Their job and these people, you know like all
 3 the citizens of Lyons township including Mr. Hoffman's
 4 clients, they all vote for these people. They get
 5 elected and their job, and I don't think anyone will
 6 disagree, their job is to take this money and invest
 7 it, pool it together and invest it. It is an economy
 8 pail.
 9 And their job, which is discretionary, how they
 10 do the highest and best investment, whether you do
 11 long-term bonds, short-term bonds, some cash, some
 12 this, and they seek advisors. And under the statute
 13 you appoint a Treasurer, and that Treasurer is in
 14 charge of doing that.
 15 And if we are going to get in the middle and say
 16 -- part of it, I will moot this because as we address
 17 this you will see that the \$6 million, you know,
 18 whether it is \$6 million there or \$6 million
 19 otherwise, there is money damages, so there is no
 20 question that injunction shouldn't issue. So I think
 21 we can kind of get to the hear that way.
 22 But on a basic rudimentary governmental
 23 constitutional issue, the Court can't meddle and say
 24 we are going to tell you whether you should keep this

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1 in cash and put it in an account or whether it should
 2 be in a bond. And it gets to the heart here that
 3 Lyons Township is completely protected.
 4 We are talking hundreds of millions of dollars,
 5 Your Honor, that will be in these pooled accounts and
 6 are in these pooled accounts. And if they do get a
 7 monetary judgment, which you know obviously my
 8 position is they won't, but you know every lawyer has
 9 their positions, and I get that.
 10 But what we are dealing with today is an
 11 injunction that they are completely and totally
 12 protected, okay. There is no irreparable harm. There
 13 is -- the can --
 14 THE COURT: Okay. We are talking about a
 15 constitutional issue, now you are getting --
 16 MR. QUINLAN: Right.
 17 THE COURT: (Indiscernible). What is your
 18 argument regarding the separation of powers issue?
 19 MR. QUINLAN: The separation of powers, Your
 20 Honor, is they are charged to invest that money how
 21 they see it. It is a discretionary act. Whether they
 22 choose to keep that in an account or whether they put
 23 it in a long-term bond or a short-term bond --
 24 THE COURT: Isn't that already a determination

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1 that the money doesn't belong to --
 2 MR. QUINLAN: No.
 3 THE COURT: don't they --
 4 MR. QUINLAN: No. That is fundamentally, that is
 5 the heart of the case. Absolutely not from our pit.
 6 I mean, absolutely not, and I don't mean to be loud
 7 about it, but absolutely not. There has not been a
 8 determination, that is the whole point. That's why we
 9 are here and that's what Lyons is trying to do from
 10 our perspective, is they are trying to get you to make
 11 some determination.
 12 THE COURT: The determination was that there was
 13 no, you know, accounting errors by the Trustee, right?
 14 Wasn't that the determination by Judge Esrig at the
 15 trial?
 16 MR. QUINLAN: No.
 17 THE COURT: That there was no over-allocation to
 18 --
 19 MR. QUINLAN: No, no, not at all, not at all. I
 20 am happy to address, though, I don't think that's
 21 before the Court, but I am happy to address that.
 22 Absolutely not, Your Honor. I mean I will address
 23 that because the Court raised it. The Township
 24 Trustee brought a motion for declaratory judgment. I

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1 mean, we all understand the burdens that go with that
 2 as to whether or not you could get a declaratory
 3 judgment.
 4 The Court merely found with respect of certain
 5 things that you couldn't get a declaratory judgment.
 6 It did not find the converse, not for a second, and no
 7 could it.
 8 THE COURT: Okay.
 9 MR. QUINLAN: And so that isn't the case and what
 10 we are dealing with to get to the constitutional
 11 argument in and it as point as possible, Mr. Getty,
 12 Mr. Theissen, who is elected took an oath of office to
 13 invest this money and he has an obligation to invest
 14 that money how they see fit on behalf of all of the
 15 voters of Lyons Township.
 16 And for the Court to say, well no, you are going
 17 to have to keep it in an account? That's my whole
 18 point. There is not harm, they are going to be
 19 protected. But it is not the Court's prevue to say,
 20 we are going to keep this as cash. It is not.
 21 Whether they put it in a long-term bond, whether they
 22 invest it, you know, they go ahead and invest in the
 23 Chicago Bears or whomever, that which would probably
 24 be gross negligence, but you know that is their

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1 discretion.

2 And that is what they were elected to do, and

3 frankly, that's what is their obligation to do, no

4 different than Your Honor's obligation is to hear

5 cases and make decisions. You are an elected official

6 as well. They sit in a different branch of

7 government, but that's what they have to do.

8 And if you read the Complaint that was filed, I

9 don't mean, that's not -- the Complaint that was filed

10 by the Lyons Township 204, one of our member

11 districts, one of the districts that votes for, they

12 say that the job is to pool the investments. And I

13 believe it is paragraph 6: To pool the investments

14 and to invest that -- that is, in fact, it is

15 paragraph 4. Okay. All the monies collected for the

16 members districts are held and invested by the TTO in

17 a pooled account, but the monies for each district

18 must be accounted for separately.

19 That's just -- that's not a separate account,

20 Your Honor, we keep ledgers. But we have an

21 obligation to invest that money and we are not talking

22 small amounts of money; we are talking hundreds of

23 millions of dollars here on behalf of school children.

24 THE COURT: I am just trying to unwind your

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1 argument here.

2 MR. QUINLAN: Well, my argument is basic. By you

3 holding the money in an account, Your Honor, you are

4 telling the TTO how to invest it because you are

5 keeping that money as cash and that is not the Court's

6 prevue to do that.

7 THE COURT: But isn't there a question about

8 whether the money belongs to the TTO or belongs to LT?

9 MR. QUINLAN: Well, LT --

10 THE COURT: Isn't that the crux of the issue,

11 here?

12 MR. QUINLAN: If I may? I am sorry. If I may?

13 THE COURT: Yes.

14 MR. QUINLAN: That is LT's crux, I don't dispute

15 that. That's what they are alleging, but that doesn't

16 allow and that's why I made the point to say they are

17 adequately protected because I can get there from two

18 different roads. It is like getting to the capital

19 from northwest Washington or southwest. All roads

20 lead to the capital and you can get there in other

21 ways.

22 The point being here, is because they have an

23 adequate remedy at law because there is all sorts of

24 money here for them to collect if they need be, and

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1 they have no reparable harm. You don't even need to

2 get to an injunction, but they are claiming that and

3 under that theory, Your Honor, then a Court can come

4 in and tell them how to invest because now all of a

5 sudden you become a board of managers, which is you

6 think the safest thing is to keep this money in the

7 account to protect them. Well, that's not their job.

8 Their job is to act and use their discretion to invest

9 this money.

10 THE COURT: Let me ask you, are you -- are we

11 still arguing about the TRO or are we moving on to the

12 preliminary injunction? I feel like I have made a

13 ruling on the TRO, so are you now arguing about the

14 preliminary injunction?

15 MR. QUINLAN: I am happy to argue about the

16 preliminary injunction. I think the argument is the

17 same. I did not realize the Court made an argument on

18 a TRO because --

19 THE COURT: Well, I did make a ruling on the TRO.

20 I talked about how we were going to remove some

21 language and add others, other language, right?

22 MR. QUINLAN: Yeah, sure.

23 THE COURT: that was -- yeah, that was my ruling

24 on the TRO. So I am happy to entertain argument and I

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1 have been listening to what you are saying, but to me

2 it seems like now we are moving on to the TRO. Is

3 that fair?

4 MR. QUINLAN: I think it applies equally to both,

5 so I am happy to do it.

6 THE COURT: I get that. I get that.

7 MR. QUINLAN: It gets to the heart of what we

8 here for and that's why I don't want to split hairs

9 and you know, argue. That's why I said about the

10 Order when we are here in the preliminary injunction

11 hearing, and I think it will be abundantly clear that

12 there is absolutely an adequate remedy of law.

13 You are talking about hundreds of millions of

14 dollars and that there is no irreparable harm. That

15 the TTO has brought counterclaims in the other

16 lawsuit, which again, as you pointed out when you said

17 there is additional facts, and I am not sure how

18 relevant that is.

19 That, you know, the fact is that they did, and

20 they did not seek a TRO, oh why, because of course

21 they had no reparable harm and they have an adequate

22 remedy of law because there is all this money. Or

23 they could add the other school districts.

24 So for me, you know, this whole thing, and I

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1 think, look, 204 knows that, in my opinion and I am
 2 not trying to bluster because the media is on and that
 3 type of stuff. It just is a very simple issue that we
 4 are for, whether an injunction can issue. And the
 5 simple answer is it can't issue because there is an
 6 adequate remedy at law. There is more than enough
 7 money. It can't issue for that reason. It also can't
 8 issue because I do think the Court is getting into --
 9 you know, if they need more reasons, a political
 10 question of telling people how to manage this money.
 11 There is no fear that they can lose this money.
 12 You hear things like, well, we have the other school
 13 districts. Well, part of our motion to dismiss and
 14 part of what you will consider is if they believe
 15 that, they can have the school districts. It is not a
 16 difficult thing to do. No one has tried to add them.
 17 I mean this is all the co-performer Mayor Daley silly,
 18 silly, silly. I mean, they know --
 19 MR. HOFFMAN: Excuse me, Your Honor.
 20 THE COURT: Are you making an objection?
 21 MR. HOFFMAN: Yeah, I object to --
 22 THE COURT: To what?
 23 MR. HOFFMAN: I object to our position being
 24 called silly, silly, silly. It is unprofessional and

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1 there is no place for it in this hearing.
 2 THE COURT: I understand. I understand. I will
 3 allow you time, Mr. Hoffman, to respond.
 4 MR. QUINLAN: I bit my tongue, Your Honor, when I
 5 heard him use the word insane, which personally
 6 bothers me.
 7 THE COURT: Okay. Come on, let's move on.
 8 MR. QUINLAN: I get it. I get it. Frankly, I am
 9 really trying not to go there. So I am not trying to
 10 talk loudest. But I am trying to shape this hearing
 11 for when the Court looks at it and I am worried that
 12 we got a little a foul, you know, a little sort of a
 13 foul from where we were, which is you know it is very,
 14 very simple.
 15 Is there an adequate remedy of law? The answer
 16 unequivocally if everyone knows that -- that knows
 17 this funds is, yes. Is there irreparable harm? The
 18 answer is no. And you will hear testimony, and it is
 19 in the pleadings, so I am not (indiscernible).
 20 Your Honor, we transferred them over four-and-a-
 21 half million dollars at their agreement. And I will
 22 quote the school Superintendent and he said basically
 23 -- actually, I can pull it word-for-word. But he
 24 basically said, we don't care where the funds come

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1 from. So if the funds aren't fungible, Your Honor,
 2 understand their theory, which you know isn't right,
 3 and I am not trying to be harsh about it, but it is
 4 not right.
 5 Right? If their position was correct, then they
 6 would be taking money from other school districts,
 7 which as an elected official I don't think that's what
 8 they want to do. So the money is there to pay, if in
 9 fact they are correct, you know and obviously we take
 10 a different position. But if in fact they are
 11 correct, the money is there to pay them.
 12 And since the took over four-and-a-half million,
 13 their best day in court, if you believe them, is \$1.2
 14 million dollars. Well, we've got over \$200 million,
 15 you know, it is not even one percent. I don't think
 16 that is going to run to zero. And I think they are
 17 more than adequately protected. And I think when you
 18 balance that against the political waters that the
 19 Court would be wading into, trying to tell a Court how
 20 they -- excuse me. Trying to tell an elected official
 21 whose sole position and what they are elected to do is
 22 to manage this money in the best interest of all of
 23 the elected people that they wanted that elected them,
 24 that we are getting into that.

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1 And I think that's just improper. And I think
 2 that they're more than protected to do that. And I
 3 frankly think, you know, you'll hear this if we take
 4 testimony, which is if 204 really doesn't like how the
 5 money's being invested and wants to be a board of
 6 managers, we all know. I don't -- frankly I don't
 7 like how the crime in Chicago is being dealt with, but
 8 you know what my answer is, to vote for somebody else
 9 or get someone else to run.
 10 And the same is true with the TTO or with 204.
 11 They vote for the TTO. If they don't like how the
 12 money is being invested or they did not, run for the
 13 position, vote for someone, lobby. Do what we do as
 14 Americans. But what we can't do is those -- those
 15 boards that were established by the legislature, we
 16 can't interfere with what their job is and the
 17 discretion that the voters gave them which is to
 18 invest this money.
 19 And then when you couple that with the fact that
 20 there is absolutely no reparable harm in there is an
 21 absolute, adequate remedy at law, I mean, you have all
 22 this money. They brought counterclaims and other
 23 lawsuits where they wanted money. They did not seek
 24 an injunction and said we couldn't move it around.

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1 And that all ties together, I know we are -- not
 2 trying to re-litigate, but I am making points. Part
 3 of the reason I don't want to go to Esrig is because
 4 he, of course, knows that. Months of testimony,
 5 honest, and I don't -- system and probably a little
 6 archaic, Your Honor, I appreciate that.
 7 But the issue before, the Court on the injunction
 8 is very simple, which is they have an adequate remedy
 9 at law, the dollars are there, okay. And we know
 10 they're fungible because they took over four-and-a-
 11 half million dollars from a different account. We
 12 asked them, they said, we're happy to transfer, do you
 13 want it? And their Superintendent said: Yes, we do.
 14 We'll take it from any account. And we sent it to
 15 them.
 16 So they're more than adequately protected and Mr.
 17 Theissen and Mr. Getty have an obligation that they
 18 raised their arm and they took an oath saying that
 19 they have an obligation to invest this money in their
 20 discretion, the best way they can, and it may not be
 21 leaving it in the account, and you can't tie their
 22 hands in the same way you can't tell a legislator how
 23 he or she may have to vote on an issue, or after
 24 duties that they have as an obligation when they got

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1 elected. That's the problem. Their fundamental task
 2 is to invest this money, and we're wading into that.
 3 THE COURT: All right, Mr. Hoffman. I will allow
 4 you to respond, and I have a couple of questions
 5 before we move on to talking about the elements. But
 6 go ahead, Mr. Hoffman.
 7 MR. HOFFMAN: Well, unfortunately, Mr. Quinlan's
 8 twenty-minute dissertation here is -- I don't recall
 9 the Court asking for the counsel to make arguments on
 10 the motion for preliminary injunction beginning with
 11 the party that isn't the movement. Mr. Quinlan, just
 12 decided to reargue all the same issues that this Court
 13 has already decided.
 14 He complained about you not transferring the case
 15 to Judge Esrig, even though we've resolved that issue.
 16 He again brought up the very same issue that he
 17 brought up when he was in his car on September 23rd.
 18 Oh, there's two-hundred-and some million, we will keep
 19 it in that.
 20 The Court rejected that and here we are arguing
 21 about it again. Mr. Quinlan cites to -- raises a new
 22 legal issue that is not addressed in the parties'
 23 pleadings and cites the two cases that are not cited
 24 in the TTO's papers. Essentially what he's saying is

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1 that this is a political question. I will assure you
 2 Your Honor, and I will provide documentation of this.
 3 This is the same argument that the TTO raised in the
 4 2013 lawsuit that was thoroughly rejected by the Court
 5 in that case.
 6 This argument is no pressure now than it was
 7 then. The TTO filed repeated motions to dismiss in
 8 the 2013 case, and they were all denied. They filed a
 9 motion for summary judgment, and it was denied. They
 10 argued aggressively and repeatedly, and seemingly
 11 endlessly how the TTO had done all these terrible
 12 things and they were entitled to over \$6 million
 13 dollars in damages and the Court rejected all of those
 14 claims.
 15 So here they are again talking about their
 16 unfettered discretion to do what they want to do when
 17 we're really talking about two bank accounts that Mr.
 18 Getty used to put our money in. Now this argument --
 19 by the way, I have to do is read Judge Esrig's
 20 findings of fact and conclusions of law to see all of
 21 the ways in which Mr. Quinlan's arguments were
 22 rejected by Judge Esrig.
 23 This is not a big pool of money, and by the way,
 24 in that case -- in that case, the TTO took the

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1 position, and again I can provide the Court with
 2 chapter and verse on this. They took the position
 3 that they did not owe a fiduciary duty to LT or any of
 4 the other school districts, but instead they owed a
 5 fiduciary duty to the taxpayers of Lyons Township.
 6 And essentially, they claim that they have the
 7 authority to invest all of this money however they
 8 want and do with it what they want and make
 9 determinations how they want. And again, the Court
 10 rejected that and found there was a fiduciary duty by
 11 the TTO owed to LT and the other districts. It is in
 12 the findings of fact and conclusions of law, okay.
 13 So, all this notion about how we are supposed to
 14 lobby the TTO, or we should run for the TTO's board
 15 instead of Mike Theissen. That's all noise and
 16 background noise that Judge Esrig heard, rejected
 17 because this big investment pool, if you look at the
 18 actual statute, which Judge Esrig discusses, Section
 19 8-7. What it says, is each school district has its
 20 own separate account and funds and has to be managed
 21 separately. And Judge Esrig specifically found that
 22 the TTO does not act as a trustee, as they claimed.
 23 That the TTO has no discretion over spending any of
 24 these funds without school district approval, and

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1 that's why they filed the last lawsuit because they
 2 couldn't take money for LT's account, our agency
 3 account, without Court approval.
 4 And the Court, except for a very minor issue
 5 involving having to pay part of their legal fees, and
 6 a couple of other expenses, rejected all of their
 7 requests to pull money. So now what they're doing is
 8 having failed to get the Court to agree with their
 9 opinions, now, they want to do it on their own. And
 10 they want to take the money out on their own and they
 11 want to tell you that you have no authority, and you
 12 have no discretion, and you can't oversee this
 13 process, and you can't decide what the sections of the
 14 School Code say. And you need to ignore all of the
 15 findings of fact and conclusions of law of Judge Esrig
 16 and excuse yourself from this case.
 17 So this, oh, there's plenty of money there.
 18 Again, I don't recall there being an invitation to
 19 make an oral argument on the motion for preliminary
 20 injunction but given the Mr. Quinlan has made it, the
 21 problem here is that what the -- it is obvious from
 22 the Resolution that the TTO passed, that they're going
 23 to take at least part of this money and they're going
 24 to on paper, put it in the accounts of other

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1 districts.
 2 And notion that oh, there's plenty of money if
 3 you win a money judgment for the same reason Judge
 4 Esrig said they couldn't take money out LT's account,
 5 they can't take money out of District 104's account
 6 and give it back to us. It doesn't work that way.
 7 Now, the TTO's very blind solution to that is,
 8 and their motion to dismiss says: Court, dismiss this
 9 case, because the TTO did not sue all the other
 10 districts. Well, first of all exact same argument
 11 they made in the 2013 lawsuit completely rejected by
 12 the Court in that case.
 13 The whole point of this injunction proceeding is
 14 so we don't have to sue the other districts. But
 15 these other districts are just as blameless as LT is
 16 in this situation. They're in the business of
 17 teaching school kids. They are not a political
 18 organization, like the TTO.
 19 The TTO makes it seem like they have some valid
 20 useful purpose, economy of scale. They neglect to
 21 mention to the Court that in the 1960s, all of the TTO
 22 organizations statewide were limited by state statute
 23 except in Cook County suburbs, and they were kept
 24 purely for political reasons.

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1 There is clout in the jobs they have, and in
 2 assigning money to banks and investment advisors,
 3 hundreds of millions of dollars. And it is clout that
 4 Mr. Theissen enjoys and uses. And most of these
 5 organizations, even in Suburban Cook County have been
 6 eliminated. There's no Township Trustee for New Trier
 7 Township. Those folks would never put up with a
 8 nonsense.
 9 And one of the reasons that they were eliminated
 10 almost everywhere, this is like a dinosaur walking the
 11 Earth. The reason they were eliminated almost
 12 everywhere was because the Treasurer would steal
 13 school district money, which by the way, is exactly
 14 what happened here.
 15 This is Bob Healy longtime treasurer completely
 16 unqualified to do the job, total political hack, stole
 17 millions of dollars and the TTO in its wisdom decided
 18 not to conduct a forensic audit after Healy left.
 19 Judge Esrig specifically notes it, and Judge Esrig
 20 specifically says that's one of the reasons these guys
 21 have no idea how much investment income they actually
 22 made, and they're relying purely on unreliable
 23 internal records.
 24 So again, we asked them, and you are going to

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1 hear the existence today when we finally get to it.
 2 You are going to hear that LT has the TTO to again,
 3 hire an independent forensic auditor to deal with any
 4 issues between the parties, so we wouldn't end up in
 5 court again, and they refused. And here we are.
 6 Now, I am not going to go into the same length
 7 and detail that Mr. Quinlan did because I want to hear
 8 from the way this is, I want to get a decision, but I
 9 will say this, there's a reason the last case to eight
 10 years, and there's a reason that this case was
 11 separate trial, multiple times and continued, and it
 12 was expensive and long and difficult.
 13 Fortunately LT is in that case, our costs were
 14 paid by an insurance company by and large, but the
 15 TTO's spent over \$4 million dollars of public funds in
 16 that case, and they are headed right back down that
 17 same path. They're filing last minute, motions. They
 18 were making things more complicated. We were here for
 19 an evidentiary hearing, that's what we're here for.
 20 If the Court wants further briefing on this, you
 21 know, immunity issue, I would like the opportunity to
 22 provide it. And I would like the opportunity to
 23 provide the Court with the same brief they filed in
 24 the 2013 case, and the Order of the Court rejecting

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1 their position, in that case, as it should be rejected
2 again. Thank you.
3 THE COURT: All right, thank you. Thank you for
4 your -- I guess we will call that an introduction. So
5 I have a couple of questions. So number one, I guess
6 that issue here is -- is really \$1.2 million of the \$6
7 million; is that right?
8 MR. HOFFMAN: No. That is not correct.
9 THE COURT: Okay. Go ahead.
10 MR. HOFFMAN: Okay. Here is what happened, okay.
11 And again, this gets back to how the TTO is supposed
12 to run versus how they actually run it. And that's
13 one of the interesting things that you're going here
14 about, okay? So the way this statute is set up is the
15 TTO is supposed to have an account for each school
16 district, and each district has, as Judge Esrig said,
17 a precise amount of money in theory, right? That's
18 what they're supposed to have, that's what the statute
19 says.
20 And then the statute on the departure says, all
21 of those assets get transferred unless you have to
22 liquidate investments. The \$6 million dollars is
23 already liquid, it is cash sitting in an account, but
24 it is still not transferred, et cetera.

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1 But the way the TTO actually operates, it is this
2 remarkably Byzantine organization that doesn't
3 distribute all of the interest earnings, money, and
4 other assets to the districts. And what you'll hear,
5 for example, is that in the last financial statement
6 for the TTO, they had -- you'll see a list of all of
7 the districts, and they all have money for their
8 accounts, and they have a line item, and it is amount.
9 And then there's this unallocated investment
10 activity, what they used to call unallocated
11 investment income, and it is over \$7 million dollars.
12 So they're holding all this money apart from the
13 school districts, and we've asked multiple times for
14 them to account for that and explain all the money --
15 and you'll note in Judge Esrig's Order when he deals
16 with LT's counterclaim, what Judge Esrig says is the
17 TTO did not pay all of the investment income to the
18 districts, and they held some back. And he said that
19 they had the authority to do that and create a rainy
20 day fund. But that this money still belonged to the
21 district's; that's in his Order.
22 So now that we've left, we get our share of the
23 rainy day fund. So we have asked Mr. Getty -- LT has
24 asked Mr. Getty repeatedly to account for that

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1 unallocated money, to tell us what our share is, and
2 to tell us how that's going to get paid.
3 Mr. Getty has consistently refused to provide
4 that information, which is in keeping with his refusal
5 to provide all kinds of information on an ongoing
6 basis to LT, so that's a monetary issue that needs to
7 be determined in the course of his case. Now, I can't
8 quantify that. The TTO has all that information, they
9 refuse to provide it. We're going to have to discover
10 that in the case, but that's, you know, 20percent of
11 \$7 million dollars as of June 13th, 2020, is \$1.4
12 million, and 20 percent represents the low end of what
13 LT was at in terms of its percent of the investment
14 pool. We were like 20 to 25 percent, so that's number
15 one.
16 Number two, yes, we've got this \$1.2 million
17 dollars, \$1.3 million dollars, it is in between those
18 numbers that they now want to take from us because
19 they said, hey, we went back to 1995 and between 1995
20 and 2012, you got \$1.2 million dollars too much
21 income, and then the last eight years you got \$275
22 bucks too much, but mostly in this early period.
23 Now, that's exactly the same argument that they
24 made to Judge Esrig, and they lost on. And Judge

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1 Esrig on contrary to what they said in their brief,
2 Judge Esrig did not say, oh, I just don't like what
3 your expert did. I am going to reject Jim Martin's
4 analysis, which by the way, was based on a TTO
5 internal analysis.
6 So what happened there in the case, this part of
7 the record, was the TTO did a work-up and said, okay,
8 over allocation between this time to LT of \$1.5
9 million dollars and they looked at purely their
10 internal records, and then Jim Martin, their expert
11 said, I've got to go back to these bank, statements
12 and investment account statements. I've got to figure
13 out how much they actually made because that's what
14 the statute says. We get our share of the actual
15 earnings, right?
16 And so what he found was it was impossible. The
17 TTO's records are so incomplete that they don't have
18 records of their investment earnings. Judge Esrig
19 specifically found that as a finding of fact, and
20 their expert admitted to it. There are some years
21 where half of the records were missing. It was
22 horrible.
23 And this is an organization by the way, Judge,
24 that exists solely to account for money and invest

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1 money, yet, the don't have any of the source documents
 2 to support any of this. So the Judge rejected this
 3 effort on numerous reasons. And these guys refused to
 4 accept that ruling. They're saying, well now you're
 5 leaving. And by the way, Judge also said, even if I
 6 did rule for you, you can only go back five years
 7 based on the statute limitations and based on the
 8 Laches defense where you sat on your hands and did
 9 nothing about this for twenty years.
 10 So you can only go back, five years, and here we
 11 are going back to 1995, again, in violation of the
 12 Court's rulings and Orders, and it is the number is
 13 slightly different. But yes, that number is very
 14 much, at issue. Now, there's more at issue too,
 15 because yes, as Mr. Quinlan pointed out and I
 16 explained to all of this in my reply brief, which you
 17 read, we did just get about \$4.5 million dollars from
 18 the TTO with no explanation, no accounting. And we
 19 specifically asked, Mr. Getty. My client asked Mr.
 20 Getty, how did you arrive at this number because by
 21 the way, if you take \$6 million and you deduct \$1.3,
 22 you don't get 4.5.
 23 So what's the difference? Number one, he won't
 24 tell us. Maybe he'll tell us today. I am going to

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1 ask him; we will see what he says. Number two, we
 2 asked Mr. Getty to confirm that there's no other
 3 financial issues. Now, we're going to get a bill for
 4 the TTO's services, and it is going to be big because
 5 they spent an incredible amount of money on attorneys'
 6 fees last year, and we're going to have to pay a
 7 proper supported justified amount, you know, but we're
 8 not going to get that bill, and that's a bill that we
 9 get by the way, that doesn't get deducted from our
 10 account.
 11 The TTO can't deduct this expense from our
 12 account because it has no authority to on a statute,
 13 it has to send a bill, and we have to authorize the
 14 payment of a check. If that doesn't tell you
 15 everything you need to know about who controls these
 16 accounts, it is not the Treasurer. The Treasurer
 17 signs it with as little imprint stamp, but only after
 18 a direction from the LT Board to spend that money.
 19 The Treasurer cannot spend that money, that's in
 20 Esrig's decision.
 21 So my point is we're going to get a bill for
 22 their expenses next year. Are there other financial
 23 issues? Now, I am perfectly willing to sit down and
 24 talk about with the TTO's lawyers to see if that \$6

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1 million dollar number can or should be reduced, right?
 2 And I will tell, Your Honor, that I reached out to Mr.
 3 Quinlan and Mr. Kaltenbach Monday afternoon, and I
 4 asked him to call me, I wanted to talk about logistics
 5 for this hearing. Neither one of them ever responded.
 6 This is unfortunately the lack of communication
 7 and cooperation that we have in this case. Will I sit
 8 down, you know, we had a meeting scheduled between the
 9 clients for September 8th, which Mr. Getty canceled.
 10 Sure, I'd like to determine everything that's really
 11 in dispute, but because we can't get that information
 12 from LT, and they're so stubbornly refusing provide it
 13 despite their fiduciary duty to us; I can't tell you -
 14 -
 15 THE COURT: You mean from TTO, not LT?
 16 MR. HOFFMAN: Oh, I am sorry. From the TTO
 17 because they refuse to provide us information or to
 18 answer even the most basic questions about how they
 19 calculated figures, what does it include, are there
 20 other financial issues? And look, these guys are full
 21 of surprises.
 22 We've got last-minute motions here, we, you know,
 23 have this Resolution that was never made publicly
 24 available. So I can't predict what's going to happen

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1 or what position they're going to take tomorrow, I
 2 don't know, but I am willing to sit down and talk with
 3 them about this amount.
 4 And we're going to have a hearing today at which
 5 we're going to explore what really is at issue.
 6 Hopefully we will find out under oath because we can't
 7 find out any other way, so thank you.
 8 THE COURT: Okay, thanks. So let me clarify.
 9 Hold on, let me ask a couple of questions. So the
 10 \$4.5-plus amount was transferred on --
 11 MR. QUINLAN: The 27th right.
 12 THE COURT: On the 28th of September. Okay, and
 13 that was after our last hearing, right?
 14 MR. QUINLAN: Correct.
 15 MR. HOFFMAN: Correct.
 16 THE COURT: And that money came from where? And
 17 was that -- let me ask -- I guess --
 18 MR. QUINLAN: Yes, I am happy to answer that.
 19 THE COURT: My question is, does that -- is that
 20 supposed to be, you know, there is \$6 million dollars
 21 held. I guess you are claiming there is a question
 22 about who owns \$1.2, \$1.3 or roughly in that area.
 23 You transferred them \$4.5, is that supposed to be, you
 24 know, offset at some point against the \$6 million

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1 dollars that is being held?

2 MR. QUINLAN: Your Honor, from our perspective,

3 let me say this.

4 THE COURT: It is a yes or no. Is that supposed

5 to be offset?

6 MR. QUINLAN: Well, I don't agree with the \$6.5,

7 so let me just say, with the offset is a matter of

8 law? Of course, it is whatever they are owed, they

9 are owed, okay? So I mean -- again, my problems with

10 the presumption, like the Court is talking like there

11 is \$6.5 that is owed. There is not.

12 THE COURT: Oh, no, no, no. I said there is \$6

13 Million being held, right? \$6 million being held.

14 MR. QUINLAN: No. So it was not set off from

15 that, and that's why if I could have a moment, I am

16 not trying to be difficult, but again, we're here for

17 an injunction hearing. It's merely an injunction

18 hearing. We sent them \$4.5. We told the Court that

19 we would not transfer \$6 million out of the two

20 accounts that were referenced.

21 THE COURT: Right.

22 MR. QUINLAN: Beyond our word is Officers of the

23 Court. We did not believe an Order was entered. We

24 did not. We took \$4.5 from a separate account, we

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1 wrote to Lyons Township and said, we're willing to

2 transfer this money that we believe we owe you to

3 follow our obligation under the statute and complete

4 this within ninety days.

5 Here is the figure we have, we're willing to

6 transfer it to you, it is from a different account, so

7 we are going to honor what we told the Court. If

8 you're willing to accept it, we will send it from a

9 different account because we do have control and

10 dominion over other accounts.

11 Lyons Township, and that's what I read to the

12 Court, probably when I talked a little bit long, but

13 it seems short after today. But they said we don't

14 care what (indiscernible) comes from, we will take it.

15 THE COURT: So eventually that money will be set

16 off against the \$6 million dollars that's being held,

17 at least that's your idea.

18 MR. QUINLAN: Or said differently. Are they

19 entitled to whole \$6 million, even assuming that they

20 have all the elements of an injunction? The answer is

21 no. So, yes, okay?

22 THE COURT: Okay, all right. And then my next

23 question is going to be what happened at the special

24 meeting back in late September?

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1 MR. QUINLAN: So at the special meeting the Board

2 of Trustees, and I do think that the Resolution was

3 attached to Mr. Hoffman's pleading. They passed the

4 Resolution, took public comment, and they directed Mr.

5 Getty to make a ledger entry, which is, you know,

6 again how we keep track of these monies, a ledger

7 entry reconciling these accounts. That was passed, it

8 was directed, and Mr. Getty did make the ledger

9 entries as he was obligated and directed to by the

10 Board of Trustees.

11 I can get into specifics if you want, Your Honor,

12 if you want, it is attached. The Resolution is

13 attached, but it was basically taking what Mr. Getty

14 had determined based on his true up for, you know,

15 various years and make the various ledger entries, and

16 he was directed to do so.

17 THE COURT: Okay. Yeah, so I have your -- who

18 sent me all these exhibits, LT exhibits? Okay, is

19 that part of part of this series of exhibits?

20 MR. QUINLAN: Yes, it is, Your Honor.

21 THE COURT: And what number or letters?

22 MR. QUINLAN: The Resolution?

23 THE COURT: Yeah.

24 MR. HOFFMAN: Hang on, let me get that, I will be

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1 right with you.

2 MR. HOFFMAN: Okay, so the Resolution is Exhibit

3 N, as in Nancy.

4 THE COURT: Okay, let me get that. All right.

5 Will you call my attention to the specific portion of

6 this that applies here in this case?

7 MR. HOFFMAN: Are you asking me or Mr. Quinlan,

8 Your Honor?

9 THE COURT: You, Mr. Hoffman.

10 MR. HOFFMAN: Okay. Thank you, Judge. Yeah, so

11 essentially what they do in all these whereas clauses

12 is they reference Section 8-7 in the fourth paragraph.

13 They reference Section 8-7 as well in the seventh

14 paragraph as the legal basis for the investment

15 allocation issues, that's the same provision they

16 relied on in court when they filed their claim. Then,

17 on the next page they go through, and they say, you

18 know, we've looked at our records and it looks like LT

19 got too much money. Going back to 1995, again,

20 that's the same thing that they said in the second

21 amended complaint in the lawsuit.

22 And then on page 2, they have the actual sort of

23 action items. And number one, it says that it

24 authorizes the Treasurer to make modifications, to the

<p style="text-align: right;">Page 70</p> <p>1 books and records to make sure each district has a 2 proper allocation of investment income. 3 That's the declaratory judgment that they asked 4 Judge Esrig, for which he denied to make changes to 5 the agency accounts. And then (indiscernible). 6 THE COURT: I am asking you -- Mr. Quinlan, I am 7 asking -- 8 MR. HOFFMAN: And then number two says, you know, 9 make -- reallocate income proportionally as a 10 percentage share of income, and then three has the 11 actual amounts. 12 Three has the changes, and these are the -- in 13 paragraph 3, these are the additions of where they put 14 the money that they took from LT and other accounts. 15 To get the amount they took from LT, that's on the 16 middle of page 2 where it is \$1.263, \$220.09 million 17 dollars. They also took smaller amounts from three 18 other districts or four other districts, I misspoke. 19 THE COURT: Okay. 20 MR. HOFFMAN: So in the whereas clause, they say 21 what they're taking, and in the paragraph 3, they say 22 where they're distributing it on paper, anyway. 23 THE COURT: Got it, okay. 24 MR. HOFFMAN: And this is again, their second</p>	<p style="text-align: right;">Page 72</p> <p>1 conceptually, Your Honor. Here is how I would think 2 about it. So as of July 1 of 2021, the TTO had to 3 determine all of our assets and provide those to us 4 unless there were some investments that had to be 5 liquidated, and they had ninety days to do that. But 6 it appears to be all liquid. So we add about \$47 7 million dollars as our precise balance in our agency 8 account. 9 What I am saying is, it appears that there was 10 additional money that the TTO was holding that it had 11 not allocated to all the districts, but that all the 12 districts owned. We don't know how much that is, and 13 we don't know what our share is. So for example, just 14 using the 2020 number, you know, it would be about 15 \$1.5 million dollars in additional assets. 16 So if on July 1, we had the money in our agency 17 account and \$one-and-a-half million dollars in 18 unallocated assets, and then they pay us part of the 19 \$6 million dollars. Do we really have \$6 million, or 20 do we really have seven-and-a-half? In other words, 21 are we going to segregate out or we going to account 22 for in the segregated funds the additional money that 23 we should have gotten that was outside of the \$47 24 million?</p>
<p style="text-align: right;">Page 71</p> <p>1 amended complaint as you know, different numbers, same 2 idea. 3 THE COURT: Okay, all right. And then here's 4 another question. So in any event regardless of how 5 the preliminary injunction hearing turns out, you 6 would agree, Mr. Hoffman, that holding \$6 million 7 dollars at this point would be inappropriate, right? 8 It would be \$1.3-ish in the range of, right? 9 MR. HOFFMAN: Not necessarily, Your Honor because 10 there's also -- we're entitled under the statute to 11 get all of our assets. That's what the statute says. 12 All of our thoughts get transferred. We believe that 13 they're holding additional assets that were in, in our 14 agency account, that belong to us, that they have not 15 accounted for and given us. 16 THE COURT: Hold on, but the TRO is addressing 17 only the \$6 million, right? 18 MR. HOFFMAN: Right. 19 THE COURT: So we're not going to talk about the 20 other assets today, right? Because this is a 21 promotion on preliminary injunction, right? And so, 22 you have a lawsuit pending, but the TRO is addressing 23 only the \$6 million that they are holding presently. 24 MR. HOFFMAN: Well, here, let's put it this way,</p>	<p style="text-align: right;">Page 73</p> <p>1 THE COURT: Your best estimate of that amount is 2 \$1.5 million; is that right? 3 MR. HOFFMAN: Well, that's as of 2020. They 4 won't tell us what the 2021 number is, so I don't know 5 what it is, and frankly sometimes they say we can't 6 give you the information until our books are audited. 7 So they may say they don't know, but again, this is 8 because of the strange way that they do their 9 business, where they've got all this money that 10 belongs to the districts, that they have not 11 allocated. By the way, in 2019, it was a million 12 dollars, and prior to that, it was always a smaller 13 number. 14 For some reason it ballooned in 2020 to \$7 15 million, which was very difficult to understand. And 16 so this, you know, rainy day fund, yeah, we're 17 entitled to that money, and we would like it. We 18 would like the money that's held in the bank account 19 to be large enough that that money could be paid out 20 of that bank account. 21 THE COURT: I get it, yeah. What's your best 22 estimate of that amount? 23 MR. HOFFMAN: Well, again, we're going to have -- 24 I mean maybe -- maybe the detail can tell us what that</p>

<p style="text-align: right;">Page 74</p> <p>1 number was. You know, we keep asking Mr. Getty how 2 much was it? What is our share, and how are you going 3 to pay it? And he keeps not answering us, so it is 4 very difficult to do this.</p> <p>5 THE COURT: Well, I am not very good at math, but 6 I am going to look at -- and I guess I know, you know, 7 we're talking about -- is that an interest-bearing 8 account where that's being held?</p> <p>9 MR. HOFFMAN: And so there's also like a \$200,000 10 -- yeah, these are all interest-bearing accounts, they 11 are their money market accounts just like the \$55 12 million in other money market accounts, the TTO has, 13 it is indistinguishable.</p> <p>14 But we still don't know. So if you take -- 15 again, if you take \$6 million, you deduct four-and-a- 16 half, you get one-and-a-half. It is not \$1.2. What's 17 the other amount for? They won't tell us that, 18 either. I can't understand how --</p> <p>19 THE COURT: Well, I would imagine they are 20 building in some kind of a cushion, right?</p> <p>21 MR. HOFFMAN: I have no idea. And, again, Mr. 22 Getty owes a fiduciary duty to LT for these funds.</p> <p>23 MR. QUINLAN: (Indiscernible).</p> <p>24 THE COURT: Hold on, Mr. Quinlan. Hold on.</p>	<p style="text-align: right;">Page 76</p> <p>1 hundred percent wrong when he talks about accounts for 2 various districts. That's not what the statute says, 3 it talks about pool investments, and we have to 4 account for the money, not bank accounts.</p> <p>5 Second of all, again, I just want to keep going 6 back to we are here for an injunction hearing. What 7 Mr. Hoffman is asking for you -- first of all, I think 8 he admitted that there are monetary damages he can 9 recover.</p> <p>10 Second of all, what he's asking for and that the 11 Court of Appeal cases are really clear that we can't 12 do here is provide hear 204 asking for is what they 13 want from the Court. And as the Court know, there's a 14 whole different standard for that, and he could have 15 filed a motion for that. And I would address that, 16 you know, obviously, I don't think it will prevail, 17 but that's not what's before the Court today.</p> <p>18 And what is before is an injunction and listening 19 to him talk to you about things that are ancillary to 20 what he originally raised, that's prejudgment 21 attachment. And it kind of gets to my point. 22 Frankly, I don't want to keep talking, but I feel like 23 I need to respond to some of these things that are 24 said. I don't doubt it said to the news media that's</p>
<p style="text-align: right;">Page 75</p> <p>1 MR. HOFFMAN: The Court held that there is a 2 fiduciary duty, that the TTO serves as a fiduciary to 3 LT, not the taxpayers, like they claim, but to LT. 4 That's in Judge Esrig's opinion. So, we are asking 5 for our fiscal agent to report to us our funds. The 6 fact that they won't, and they dance around these 7 issues, frankly, tells you what you need to know about 8 their intentions.</p> <p>9 THE COURT: All right. Did you want to say 10 something, Mr. Quinlan?</p> <p>11 MR. QUINLAN: I am happy to answer the Court's 12 question and obviously, one, I think what -- let me 13 say this, and I will say a couple things. The first 14 is the \$7 million and Mr. Hoffman's talking about, 15 there's no bank account, there's no cash. Those are 16 unrealized potentially gains.</p> <p>17 As I started when we talked the Court that we 18 invest money in numerous different instruments. And 19 if you have a 401K or some program, it is not liquid 20 and cash, it is not -- you may have a value today that 21 is different tomorrow.</p> <p>22 So that number changes, you know, as the wind 23 blows. It is the fair market value at the time, we 24 did it, there's no accounts. I mean, he's just a</p>	<p style="text-align: right;">Page 77</p> <p>1 here watching, I am trying not to engage in that. But 2 it is clear that we're here for an injunction, it is a 3 simple question of, is there irreparable harm or is 4 there an adequate remedy at law?</p> <p>5 THE COURT: Okay.</p> <p>6 MR. QUINLAN: They took four-and-a-half million 7 dollars, Judge, from a different account. They took 8 it, they agreed to it, we have control, we have 9 dominion over them, provided to them. They are more 10 than protected. I'd ask to just dismiss.</p> <p>11 MR. HOFFMAN: Your Honor --</p> <p>12 MR. QUINLAN: Hold on, Jay. Hold on.</p> <p>13 MR. HOFFMAN: Okay, I did not know you weren't 14 done.</p> <p>15 THE COURT: Hey, hey, hey, talk to me.</p> <p>16 MR. QUINLAN: I will, Judge, but it is a little 17 frustrating. He made comments about --</p> <p>18 THE COURT: I am going to tell him that you get 19 to finish your thought. Go ahead.</p> <p>20 MR. QUINLAN: No, but he made comments about Mr. 21 Theissen. He talks about things that are not in 22 evidence. We are as Officers of the Court supposed to 23 talk about what will be testified to. I listen to 24 things that -- everything I said, I have a witness</p>

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1 that will say that, okay? I am not trying to speak to
 2 the press. I am trying to make this a central issue
 3 and not blow it up. It's a very, very simple point
 4 which is we're here on an injunction, Judge. They
 5 took four-and-a-half million dollars from another
 6 account. We don't have a Lyons Township account. We
 7 don't have a (indiscernible) account. We don't do it
 8 that way. By the statute, with pool everything, and we
 9 have a ledger.
 10 THE COURT: Okay.
 11 MR. QUINLAN: We did our ledger entries, okay.
 12 We provided them four-and-a-half million dollars from
 13 a different account, which they took. They
 14 acknowledged that they can provide the money from a
 15 different account. There is no question that they
 16 have an equitable remedy at law, okay. Prejudgment
 17 attachment and sitting here saying, Your Honor, we
 18 might get this later and we could get that later, so
 19 hold this funds. That's prejudgment attachment. That
 20 is not an injunction.
 21 And I just feel we're getting far afield. I am
 22 happy to start the hearing, but if we're going to hear
 23 testimony talking about what they may or may not be
 24 owed going forth. There are four elements for an

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1 injunction, Your Honor, you know, at least I tend to
 2 keep my witnesses' cabin to that, and not to hide the
 3 ball, we're going to make a motion for a directed
 4 verdict because I don't think you're going to hear
 5 anyone that says, they have not -- that they don't
 6 have an adequate remedy of law and they have
 7 irreparable harm. We are trying to try the case
 8 through an injunction, and that's just not right.
 9 So, I am sorry, and I am sorry for talking so
 10 long. It has got a little far afield. I am trying to
 11 keep it narrow, but I do think it is a very, very
 12 simple issue and I have not heard anyone speak to
 13 anything other than say they are owed all this money.
 14 There's all this money.
 15 When I hear money, we all know the answer to
 16 that, is okay, and they might be, Judge. I don't
 17 think they are, but let's just say they are, that's
 18 something you term in later and they can get it.
 19 That's not an injunction. And that's not tied up
 20 funds that the TTO has an obligation to invest.
 21 They are more than protected, whether it is \$1.2
 22 or \$1.4, or whatever they want to claim. They are
 23 more than protected, and they can't come in here and
 24 say, well, we might have this rainy day fund, we have

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1 all this, and why don't they tell us? Like this is
 2 questions for the Prime Minister? That's not how this
 3 works. The question is they have a motion for
 4 injunction, Your Honor. Do they meet the elements?
 5 Do they have an adequate (indiscernible)? No. Do
 6 they have irreparable harm? No.
 7 THE COURT: Okay, well let me ask you this.
 8 Everybody knows there are four elements that the move
 9 on is going to have to establish in Order to be
 10 entitled to a preliminary injunction. You keep
 11 raising, Mr. Quinlan, what I consider to be the last
 12 to irreparable harm and no adequate remedy at law.
 13 Can we move forward so that the parties don't
 14 have to plead and prove an ascertainable claim for
 15 relief and likelihood of success, which of course
 16 everybody knows is not -- likelihood of success is a
 17 fair question that he'll be entitled to relief. Just
 18 a fair question. It's not an admission that he will
 19 likely.
 20 MR. QUINLAN: I mean, I am happy to address all
 21 the elements.
 22 THE COURT: That's fine. I am trying to
 23 streamline it if we are able.
 24 MR. QUINLAN: I know, and I can tell you this,

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1 Your Honor, what I am happy to do -- look, I am just -
 2 - I am not willing to waive anything. I mean, I am
 3 sure you've sat where I sat at another time in your
 4 life, so I think you understand where I am coming
 5 from. But I do think from our perspective, if we just
 6 dress, and I am not willing to waive that the other
 7 two are there, because certainly, and I understand the
 8 fair question, very, very well.
 9 But you know, it is legitimately a fair question.
 10 I think they won't meet all four, but I think if they
 11 can't meet the two that I've laid out, we don't even
 12 have to get to the other two.
 13 THE COURT: I think that's true. Mr. Hoffman.
 14 MR. HOFFMAN: You know, Judge Esrig made findings
 15 and Mr. Quinlan is ignoring them, and that's a
 16 problem. On page 38 of Judge Esrig's Order, he talks
 17 about the unallocated income. He says best -- he says,
 18 not all investment income is allocated quarterly to
 19 the districts. We proved that at the trial.
 20 Best practices requires the TTO to hold a balance
 21 of unallocated income to account for market
 22 fluctuations and errors in allocation. These
 23 unallocated balances belong to the districts in
 24 amounts equal to their respective prorated shares but

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1 have not been formally credited to the districts on
 2 the TTO's books and records.
 3 That's the unallocated money that we're talking
 4 about here, okay? And then again, and I guess we're
 5 just going to go around in circles on this is forever
 6 with Mr. Quinlan because he's still talking about this
 7 \$200 million dollar investment pool, but Judge Esrig
 8 very specifically found that each district has its own
 9 account. And look, let me just clarify something
 10 about, you know, what Mr. Quinlan is saying about a
 11 bank account, okay?
 12 So, Your Honor, let's say you have an investment
 13 account at BMO Harris, right? And BMO Harris doesn't
 14 have like an underground file drawer system in the
 15 basement where there's a drawer, they pull open and
 16 there's a folder that has your money in it.
 17 They keep your money with all of the other
 18 customer's funds, and they invest it in whatever they
 19 invested it in to make money for their shareholders.
 20 But the point is that's not BMO Harris having \$1.5
 21 million dollars, and if you have a fight with BMO
 22 Harris over the money that's in your account, BMO
 23 Harris can't say, well, we're just going to take that
 24 money and you can sue us, we have lots of money, don't

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1 sweat it.
 2 The point is if they're going to do something
 3 untoward to your account, that balance is your money.
 4 And that's what Judge Esrig decided. So that \$47
 5 million dollars, that wasn't just something, that was
 6 the precise account balance for LT on that day, that
 7 July 1.
 8 And so the \$6 million they deducted and put in
 9 separate accounts, that did not somehow become the
 10 TTO's money or have dominion or control over that.
 11 But Judge Esrig's opinion told us that is still our
 12 money and they're holding onto it. Again, they should
 13 have get given it to us. Now, the fact that they've
 14 given us four-and-a-half million dollars, that's
 15 great. We're excited about that, about time. And
 16 frankly, if we can get some explanation as to how that
 17 was done and get documentation, we can work something
 18 -- reasonable people can work something out on that.
 19 But again, when Mr. Getty won't respond to
 20 questions, and when the TTO's lawyers won't respond to
 21 phone calls and emails, it is very hard to do that.
 22 So I see where the Court is going way in terms of
 23 trying to adjust the amount to what's really at issue
 24 here. All I point out is, we'd like to cooperate in

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1 that process, but we need information, and it is all
 2 in the TTO's hands.
 3 And this again, this irreparable harm thing. How
 4 can they make an argument?
 5 THE COURT: Listen I want to try and keep this a
 6 little brighter.
 7 MR. HOFFMAN: All right. I will stop here.
 8 THE COURT: Are we now going to talk about the
 9 elements of the restraining Order?
 10 Do you want to go ahead start making your
 11 arguments, start calling witnesses?
 12 MR. HOFFMAN: You know, honestly, Judge, I think
 13 you have already heard plenty from me and I think you
 14 have heard plenty from Mr. Quinlan and Mr. Kaltenbach,
 15 and it is 11:39, and I think you should hear from the
 16 witnesses.
 17 THE COURT: That's what I am -- that's what I am
 18 asking you.
 19 MR. HOFFMAN: I mean, again, look, I will
 20 honestly --candidly, I think we can decide this whole
 21 thing on paper. And that's one of the things I was
 22 going to talk about with the lawyers, you know, the
 23 other day when I asked them to call me.
 24 They asked for an evidentiary hearing on

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1 September 23rd. I think between the judicial opinion,
 2 the exhibits we put in, assuming there's no objection
 3 to them, and there shouldn't be, I don't think.
 4 I don't think the Court needs to hear from a
 5 whole slew of witnesses and spend all of today and
 6 perhaps another day hearing testimony. And I don't
 7 think this Court wants to sit through, essentially, a
 8 half a dozen depositions to ultimately find out that
 9 all of this is laid out in the exhibits on paper and
 10 the Judge's Order.
 11 THE COURT: You know what? I have been generous
 12 and allowing parties to make their arguments. But you
 13 know, if we're going to go forward with a hearing, you
 14 know, an evidentiary hearing, where testimony is
 15 presented, I want to streamline it. I want to make
 16 sure we're addressing these specific criteria, that
 17 specific elements of a TRO.
 18 And you know, this isn't a decision on the merits
 19 of the case, as everybody knows. It is a decision
 20 about, you know, what I what I think Mr. Quinlan has
 21 raised, is there a irreparable harm and is there an
 22 adequate remedy at law? And those are really the two
 23 issues I am most interested in finding out.
 24 If there's another way to go, I am happy to

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1 go that way. If there's -- if the parties would like
 2 me to review the evidence, if the parties would like
 3 to submit briefs, I am happy to do it.
 4 MR. HOFFMAN: Well, again, Your Honor, we are --
 5 THE COURT: If you can stipulate to the evidence,
 6 I am happy to do that. If you want to submit
 7 affidavits, I am happy to take affidavits. Whatever
 8 you want to do, I am happy to do in the way that the
 9 parties will agree on. Okay?
 10 MR. HOFFMAN: Well may I make this suggestion,
 11 Your Honor?
 12 THE COURT: Yeah.
 13 MR. HOFFMAN: Because again, I mean we're at
 14 11:41, here. Maybe what we should do is take a break.
 15 I can talk with Mr. Quinlan and Mr. Kaltenbach. And
 16 we can have that discussion we needed to have, frankly
 17 earlier, and we can reconvene. And when we reconvene,
 18 we will either start with our first witness or we will
 19 have some other proposal for you.
 20 THE COURT: I liked the idea. Mr. Quinlan, are
 21 you agreeable?
 22 MR. QUINLAN: Judge, conceptionally, but no, and
 23 I will tell you why. Judge, we don't think this is a
 24 close call. We'd like to call. We're happy to put

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1 Mr. Getty up. The difficulty, and I am not trying to
 2 get into back and forth. I mean, Mr. Hoffman has been
 3 abusive to employees of mine on the phone. There's
 4 not much to talk to. I think it is a simple issue.
 5 We keep talking about Judge Esrig, I think you need to
 6 take evidence and you can hear this. I think calling
 7 Mr. Getty, and if he doesn't want to call him, I think
 8 it is going to be plain as day. I'd like to get this
 9 resolved. The TTO needs to move forward. They need
 10 at least be able to invest this money and move on. He
 11 can continue with his case, but it is a simple
 12 injunction, and I think we just need to resolve it
 13 today.
 14 We've got our witnesses ready. He's got his
 15 witnesses, ready. We've served notice to produce. If
 16 the Court wants to take a break, I am happy to take a
 17 break, but I think at the end of the day, you need to
 18 hear evidence. This isn't, you know, recitation.
 19 You said yourself that, you know, Judge Esrig -- it is
 20 a different situation.
 21 I think you can hear the evidence yourself and
 22 deal with the injunction. We can deal with the merits
 23 of the lawsuit another day. And I appreciate that. I
 24 just want to keep it cabined in, and I think we're

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1 here, happy to put either Mr. Theissen or Mr. Getty,
 2 who is the Treasurer and I think can resolve a lot of
 3 the questions the Court is going to ask him up on the
 4 stand.
 5 Or if Mr. Hoffman wants to put somebody else up
 6 that he thinks can establish the elements, he is
 7 welcomed to do that. But I think the longer we delay,
 8 we end up pushing this forward. On behalf of the TTO,
 9 and frankly, we are dealing with public money, and we
 10 are dealing with public officials. I think we got an
 11 obligation to hopefully -- I mean, I have an
 12 obligation to try and move this along to get this
 13 resolved.
 14 THE COURT: We can go forward with testimony
 15 today if that's what you'd like to do.
 16 MR. QUINLAN: That's what we like to do.
 17 THE COURT: Go ahead, Mr. Hoffman.
 18 MR. HOFFMAN: Well, Mr. Quinlan raised an issue
 19 with notices to produce, and we submitted a notice to
 20 produce to Mr. Getty and Mr. Theissen. I would ask
 21 for the exclusion of witnesses during the hearing,
 22 number one.
 23 Number two, I got a notice to produce from the
 24 TTO that in addition to calling, for a whole slew of

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1 LT people, asked for all seven members of the Board of
 2 LT. I filed an objection to that. This is an abusive
 3 litigation tactic, and there's no good faith basis for
 4 it. And it is, you know, the objections states the
 5 law, supporting it. So I don't know if -- I have not
 6 heard back from Mr. Quinlan or Mr. Kaltenbach. That's
 7 another one of the issues I hope to talk about with
 8 them before the hearing.
 9 I don't know whether they're going to insist that
 10 all seven members -- we do have the President of LT's
 11 board prepared to testify, and I think that testimony
 12 may be perfectly sufficient. We did notice only one
 13 of the two, I guess, there's only two Trustees, now,
 14 there's usually three, that's Mr. Theissen.
 15 So, perhaps Mr. Quinlan can tell us whether
 16 that's an issue.
 17 THE COURT: I know where you are going on this
 18 and here is what I would say. I would say this, if we
 19 take testimony and if it turns out that Mr. Quinlan or
 20 his colleague, Mr. Kaltenbach needs more, if there is
 21 some specific thing that they can't get from your
 22 witnesses, then we will talk about whether or not you
 23 need to bring your witnesses in, okay? Is that fair?
 24 MR. QUINLAN: I can make this simple for the

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1 Court, Your Honor.
 2 THE COURT: Yeah.
 3 MR. QUINLAN: They filed the motion. I don't
 4 know what his witnesses are going to say. I hopefully
 5 won't need any or all, obviously, we've looked at
 6 this. If we can just exclude them, so they can't
 7 watch the trial. If I don't need them, I won't call
 8 them. And I think it is super simple like that. I
 9 just don't know what his witnesses are going to say.
 10 THE COURT: All right. Yeah, I think we can
 11 exclude witnesses and for now the -- your motion, Mr.
 12 Hoffman, will be, you know -- I will take the
 13 objection under advisement. And we will decide at a
 14 later point whether or not you need to bring those
 15 witnesses in.
 16 MR. HOFFMAN: Judge, I would like to have --
 17 THE COURT: Hold on, hold on. Mr. Hoffman, go
 18 ahead.
 19 MR. HOFFMAN: I would like have Dr. Waterman
 20 present as our client representative during the
 21 hearing.
 22 MR. QUINLAN: I have no objection to that.
 23 THE COURT: Fair enough, I will allow that. And
 24 what else were you going to say, Mr. Quinlan?

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1 MR. QUINLAN: I say we are going to have a client
 2 representative as well. I have no objection to them
 3 having a client representative, obviously, and we will
 4 have one. That's all. I think the simplest answer
 5 until I hear the witnesses, I may -- hopefully won't
 6 have to call any of them. I hopefully can just make a
 7 directed verdict, but we don't know.
 8 THE COURT: Okay. All right. And you're here is
 9 what I want to do, too. I want the parties off -- Mr.
 10 Quinlan and Mr. Hoffman to have a few minutes to talk
 11 offline, okay, and see if there's any progress that
 12 can be made in any way.
 13 Mr. Hoffman asked for that, and I am going to
 14 allow it. So do you still want that opportunity, Mr.
 15 Hoffman?
 16 MR. HOFFMAN: I think it would be advisable.
 17 THE COURT: Okay, let's do that. Why don't we
 18 take a break? It's now about 10 minutes to 12:00.
 19 Did everyone been sandwich to the hearing? Is there
 20 some way to grab a bite to eat?
 21 MR. QUINLAN: We will figure it out. Whatever
 22 the Court wants.
 23 THE COURT: All right. Do you want to come back
 24 at 12:30, 12:45? What do you want to do?

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1 MR. QUINLAN: I am obviously going to push for
 2 the earlier time, I just want to get it resolved, but
 3 whatever the Court wants. And I know you have a
 4 meeting you had said in the afternoon.
 5 THE COURT: I have a two o'clock, and I am glad
 6 you reminded me of that. I am going to put my alarm
 7 on right now. I have a two o'clock.
 8 MR. QUINLAN: Whatever works the Court. We just
 9 want to get it resolved today, as you have heard.
 10 That's an issue. Whatever you think, Your Honor.
 11 MR. HOFFMAN: Just so the Court knows, so we have
 12 two people on our notice to produce. They have asked
 13 for from LT, in addition to all the Board members that
 14 we have that are present and available for them.
 15 Dr. Kilroy, who is the former Superintendent.
 16 Dr. Waterman, who is the current Superintendent.
 17 Brian Stachacz, who is our business manager.
 18 So my intention because they asked for those
 19 witnesses is I am going to have a short, direct
 20 examination for each of those people that they asked
 21 for. And then they can cross-examine them and go
 22 beyond the scope of my examination to get those
 23 witnesses done.
 24 But I am not going to just present them for

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1 cross-examination. I am going to -- as long as
 2 they're going to testify, I am going to ask them a few
 3 questions, briefly to get things started, and then
 4 turn it over to Mr. Quinlan or Mr. Kaltenbach as it
 5 is. And then we also -- we still will call the two
 6 folks from the TTO that we asked for. So that's how I
 7 see it going. So there are a number of witnesses.
 8 MR. QUINLAN: Obviously, just so we're clear. I
 9 don't agree to that. I don't even know if I need to
 10 call anyone. I think Mr. Hoffman --
 11 THE COURT: I mean, I want everybody to remember
 12 what we're here for, and it is -- this is a limited
 13 scope situation, right? Simply is LT entitled to the
 14 injunction that it seeks? And the elements of how to
 15 get an injunction, you know, what they are.
 16 I want the testimony to be focused on that. I
 17 don't want to talk about the merits. I don't want to
 18 talk, you know, except for -- to the extent that they
 19 play into this particular issue, okay.
 20 So that you know, I am hoping this will be done
 21 this afternoon, I don't know. It's up to you. But I
 22 also want to give the parties an opportunity to
 23 discuss things, so let's take a breather.
 24 Why don't we come back, it is now, you know it is

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1 a couple of minutes before noon, if you think thirty
 2 minutes is sufficient, we will come back at 12:30. If
 3 you think you need a little more time, we come back at
 4 12:45 or 1:00. You guys tell me what you need.
 5 MR. QUINLAN: 12:30 works for us.
 6 MR. HOFFMAN: Let's split the difference and come
 7 back at 12:45.
 8 THE COURT: Okay, all right. 12:45, okay. So I
 9 am going to take a break. And we will see everybody
 10 at 12:45. You know, if you're able to come to any
 11 kind of Resolution on any of these issues, I highly
 12 encourage it, okay?
 13 MR. QUINLAN: Okay.
 14 MR. HOFFMAN: Okay. Thank you, Judge.
 15 THE COURT: All right, good. We will see
 16 everybody at 12:45. Court is in recess.
 17 (WHEREUPON, a break was
 18 taken.)
 19 THE COURT: Good afternoon, everybody.
 20 MR. HOFFMAN: Good afternoon, Your Honor.
 21 THE COURT: It is 12:45, so we are back.
 22 MR. KALTENBACH: I am sorry, can someone say
 23 something so that I can check if my audio is working.
 24 THE COURT: Yes, we can hear you.

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1 MR. KALTENBACH: No, it is not.
 2 THE COURT: Oh, you can't hear us.
 3 MR. QUINLAN: Oh, there we go. I apologize
 4 everyone.
 5 THE COURT: Okay, so we are back. Have the
 6 parties had an opportunity to meet during our break?
 7 MR. HOFFMAN: We did, Your Honor.
 8 THE COURT: Okay. Has any Resolution been
 9 arrived at?
 10 MR. HOFFMAN: No. The two things we talked about
 11 were whether there is any amount of funds the parties
 12 could agree on to be withheld pending this case. I
 13 think I can fairly say the TTO's position is they
 14 won't agree to any money being set aside by Court
 15 Order until the case is resolved.
 16 I asked if they wanted to release any of the
 17 witnesses they identified, the answer was not at this
 18 time. So I am ready to proceed with the first witness
 19 who as told them would be Mr. Ken Getty.
 20 THE COURT: All right, and I am going to presume
 21 that nobody -- I mean, we have essentially made our
 22 opening statements, right?
 23 MR. HOFFMAN: Yes.
 24 MR. QUINLAN: I hope so.

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1 MR. HOFFMAN: You have heard plenty from us. We
 2 need to hear from the witnesses.
 3 MR. QUINLAN: Your Honor, I do want to raise the
 4 issue if Mr. Hoffman intends to call Mike Theissen.
 5 Mike is -- we can have him available, but he's not
 6 sitting by a computer because he is, I think,
 7 conducting some business today. He will be available.
 8 He is at a trade show out of town.
 9 THE COURT: Okay.
 10 MR. HOFFMAN: I wouldn't expect to call Mr.
 11 Theissen until much later in the hearing, and so, you
 12 know, I've kind of got him on the end. Maybe we won't
 13 need to call him, but he doesn't need to be available
 14 right now. I do have witnesses who will need a heads
 15 up in Order to drive over to LT to testify. They will
 16 need sort of a 15-minute advance notice.
 17 Obviously. I did not want them sitting there at
 18 ten o'clock waiting this whole entire time. They live
 19 about, you know, ten, fifteen minutes from high
 20 school.
 21 THE COURT: Yeah, how many witnesses are we
 22 talking about and how do we see this playing out? How
 23 long how long of a hearing is this going to be?
 24 MR. HOFFMAN: Well I have a number of questions

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1 for Mr. Getty, as the Treasurer, and then I am going
 2 to call Brian Waterman, who is the current
 3 Superintendent. I don't expect my questioning to be
 4 lengthy.
 5 I did get a request from the TTO to call Brian
 6 Stachacz, who is our business manager. If they're
 7 going to call him, I am going to ask him a few
 8 questions and turn him over to the other side. I
 9 don't have many questions for Mr. Stachacz, however.
 10 And then they subpoenaed Dr. Kilroy, the former
 11 Superintendent. Again, if they are going to call him,
 12 I am going to ask some questions first. If they want
 13 to withdraw the subpoena and release him, they can.
 14 Finally, we talked about the Board members, Carrie
 15 Dillon is the President of the Board. They requested
 16 her to be here. If they want to question her again, I
 17 am going to ask you a few questions first, and turn
 18 her over. And then that leaves Mr. Theissen.
 19 THE COURT: So one, two, three, four, five, six
 20 witnesses?
 21 MR. HOFFMAN: Yeah, and I talked with TTO's
 22 counsel about whether they really needed all of LT's
 23 witnesses and again, I don't want to mischaracterize
 24 their position, but they were not able to tell me to

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1 release any of them at this time.
 2 MR. QUINLAN: Your Honor, it is Mr. Hoffman's,
 3 you know, he's the move in, so he calls the witnesses
 4 he feels he needs, and then we will decide if we need
 5 to call anyone else. I think that's what we talked
 6 about this morning.
 7 THE COURT: All right.
 8 MR. HOFFMAN: Yeah, I am just not going to call --
 9 I am not going to just let them call a witness without
 10 me having an opportunity to kind of set the table
 11 first. So that's just my preference. That's how I
 12 wish to do it. It's based in part, frankly, on how
 13 the trial proceeded in this manner. So, you know, it
 14 is just something I think is necessary for my client's
 15 interests.
 16 So why don't we get started with Mr. Getty and
 17 hopefully make some good progress here.
 18 THE COURT: Yeah, let's do it. Are we
 19 anticipating going into another day of hearings?
 20 MR. QUINLAN: I hope not. We hope not, Your
 21 Honor.
 22 THE COURT: Mr. Hoffman?
 23 MR. HOFFMAN: I don't know, it depends on how
 24 many witnesses they ultimately want to call. And

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1 maybe after we get through a few witnesses, they will
 2 cut a few from their list, I don't know, I am hopeful.
 3 THE COURT: All right, so let's begin. Are you
 4 ready to proceed?
 5 MR. HOFFMAN: Yes, I sure am.
 6 THE COURT: Okay, and where is Mr. Getty? There
 7 you are, sir, all right. Will you raise your right
 8 hand?
 9 (Witness was duly
 10 sworn.)
 11 KENNETH GETTY,
 12 called as a witness herein, after having been
 13 first duly sworn, was examined and testified as
 14 follows:
 15 DIRECT EXAMINATION
 16 BY MR. HOFFMAN:
 17 Q Mr. Getty, I believe you have access to the
 18 exhibits from this case?
 19 A I do not.
 20 MR. QUINLAN: Jay, I am sorry. I thought I
 21 emailed you and said please have them available to
 22 pull up.
 23 MR. HOFFMAN: Well, again, Your Honor, I asked
 24 you whether they had access to the trial exhibits

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1 because I wanted to use one or two of those. But I
 2 would -- I assumed that Mr. Getty would have available
 3 to him the exhibits that we -- and the materials that
 4 I sent to everyone including TTO's counsel for this
 5 hearing.
 6 So you are telling me, Mr. Getty, that you don't
 7 have anything in front of you?
 8 MR. QUINLAN: Do you want me to put them up on
 9 the screen?
 10 BY MR. HOFFMAN:
 11 Q Let me ask you this, Mr. Getty, do you have
 12 a copy of the Court's, Judge Esrig's Order in this
 13 case?
 14 A I know it is available online.
 15 Q No, I am asking you whether you have a
 16 physical copy in front of you?
 17 A Oh, no. not at all.
 18 Q Where are you?
 19 A I am in an office. It looks like I am just
 20 sitting at someone's desk.
 21 Q I know you are in an office. Mr. Getty,
 22 whose office are you in?
 23 A I do not know. Well, I am in Mr. Quinlan's
 24 office in general, but I have no idea whose seat I am

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1 sitting in.
 2 Q Okay. So you are at the law firm now, not
 3 at the TTO, right?
 4 A Correct.
 5 Q Okay. And do you -- can someone put in
 6 front of Mr. Getty to save considerable amounts of
 7 time, the Complaint of LT, in this case, which has
 8 exhibits attached to it and a reply brief, which has
 9 other exhibits attached to it? I don't think this --
 10 should be that difficult; no one has a copy?
 11 THE COURT: Is anyone there with you. Mr. Getty?
 12 MR. GETTY: I can do it on my email.
 13 MR. KALTENBACH: Yeah, I mean, you have a copy on
 14 there.
 15 MR. HOFFMAN: I don't understand.
 16 THE COURT: Come on, Mr. Kaltenbach. Go ahead,
 17 Mr. Hoffman.
 18 MR. HOFFMAN: Would someone at the law firm, kind
 19 enough to walk a copy of LT's complaint with exhibits
 20 and LT's reply brief with additional exhibits to Mr.
 21 Getty so he can refer to them during his testimony?
 22 MR. QUINLAN: I can. The copy I have has my
 23 notations on different pages of it here that no one's
 24 going to have access to.

<p style="text-align: right;">Page 102</p> <p>1 MR. HOFFMAN: Would it be possible to produce a 2 clean copy of this document? Look, Your Honor, during 3 the trial, each of the witnesses had access to PDF 4 copies of all of the materials. And that's why I sent 5 a Dropbox link with all the materials. At LT when the 6 witnesses testify, they will have access to all of the 7 materials. I don't understand why this witness has 8 nothing.</p> <p>9 THE COURT: Mr. Kaltenbach.</p> <p>10 MR. KALTENBACH: I am happy to give Mr. Getty -- 11 I can email him something and he can pull it up on his 12 email.</p> <p>13 THE COURT: Where are you, Mr. Kaltenbach?</p> <p>14 MR. KALTENBACH: I am down the hall from him on 15 the same floor.</p> <p>16 THE COURT: Why can't you go up there? Do you 17 have a copy that he can look at? Can you walk there?</p> <p>18 MR. KALTENBACH: I have a hard copy of Mr. 19 Hoffman's complaint with all the exhibits. My thing 20 is it has some notes on it. I just don't want there 21 to be an issue.</p> <p>22 MR. HOFFMAN: Isn't there anyone -- amongst all 23 the lawyers --</p> <p>24 THE COURT: Hold on, Mr. Hoffman. Hold on.</p>	<p style="text-align: right;">Page 104</p> <p>1 the -- I mean, if you have the link to the Dropbox --</p> <p>2 MR. GETTY: I do not.</p> <p>3 MR. HOFFMAN: You do not. Do you have a copy of 4 the reply brief?</p> <p>5 MR. GETTY: So I have the verified complaint.</p> <p>6 MR. HOFFMAN: Yes, that's a good start, it is 7 halfway there. What about the reply brief?</p> <p>8 MR. GETTY: Give me one second, I am searching 9 through my email.</p> <p>10 MR. HOFFMAN: Thank you, sir. It was filed on 11 September 30th, Mr. Getty.</p> <p>12 THE COURT: Can you establish, please, Mr. 13 Hoffman, who Mr. Getty is and what role he plays here?</p> <p>14 MR. HOFFMAN: Absolutely.</p> <p>15 THE COURT: Thank you.</p> <p>16 MR. HOFFMAN: Mr. Getty, would you be kind enough 17 to tell us who you are and what your role is?</p> <p>18 MR. GETTY: Sure. It does not appear that I have 19 any brief from my essential high school that was filed 20 on 9/30. I do not see that.</p> <p>21 MR. HOFFMAN: Well, sir, I am unable to email you 22 anything directly. Would one of the lawyers for the 23 TTO be kind enough to email to Mr. Getty the reply 24 brief including exhibits.</p>
<p style="text-align: right;">Page 103</p> <p>1 MR. HOFFMAN: Okay, I am sorry.</p> <p>2 THE COURT: Is there a clean copy anywhere, Mr. 3 Kaltenbach?</p> <p>4 MR. KALTENBACH: Not a hard copy that is clean. 5 There is an electronic copy, I believe, Mr. Getty can 6 access and look at on his computer right now.</p> <p>7 THE COURT: All right. Mr. Getty says he has 8 something to say. Go ahead, Mr. Getty.</p> <p>9 MR. GETTY: I have -- I believe I have the 10 documents in my email. I just did not know what the 11 decorum was with the Court, and I just had the Zoom 12 window open.</p> <p>13 THE COURT: Are you able to open the document?</p> <p>14 MR. GETTY: Yes, let me open up my email right 15 now. And so Mr. Hoffman said it was the original 16 complaint?</p> <p>17 MR. HOFFMAN: Mr. Getty, what you are looking for 18 at this moment is a copy of the verified complaint 19 that LT filed in this case on September 22nd.</p> <p>20 MR. GETTY: Yes, then I would have that. Give me 21 one second.</p> <p>22 MR. HOFFMAN: All right. And sir, while you're 23 in the neighborhood, do you also have in your email, a 24 copy of the reply brief that we filed in support of</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. QUINLAN: Jay, I wouldn't have a problem 2 emailing him.</p> <p>3 MR. HOFFMAN: Thank you, very much. All right. 4 Let's move on.</p> <p>5 BY MR. HOFFMAN:</p> <p>6 Q Mr. Getty, would you be kind enough to 7 introduce yourself to the Court, please?</p> <p>8 A I am the Alliance Township School Treasurer.</p> <p>9 Q When did you become the -- and is that also 10 known as the TTO's Treasurer?</p> <p>11 A Correct.</p> <p>12 Q When did you become Treasurer, sir?</p> <p>13 A July 1st, 2018.</p> <p>14 Q Is it correct that you attended the trial of 15 the 2013 lawsuit as the TTO's party representative?</p> <p>16 A I did.</p> <p>17 Q And you also testified in that case as well, 18 correct?</p> <p>19 A Correct.</p> <p>20 Q All right. Now sir, would you be kind 21 enough to go to Exhibit A of the verified complaint, 22 which is Judge Esrig's Order entered in the 2013 -- 23 what I will call the 2013 case. 2013 lawsuit.</p> <p>24 MR. HOFFMAN: Your Honor, do you have these</p>

<p style="text-align: right;">Page 106</p> <p>1 materials?</p> <p>2 THE COURT: I do.</p> <p>3 MR. HOFFMAN: Okay, very good.</p> <p>4 MR. GETTY: This is Page 21 of the PDF?</p> <p>5 MR. HOFFMAN: All right. I will be happy to open</p> <p>6 that version. So, if you will bear with me for one</p> <p>7 moment, we will be looking at the same version. Okay.</p> <p>8 Sir, you are correct, the PDF number at the top of the</p> <p>9 Adobe box is 21. I am going to refer to the</p> <p>10 individual pages of the Order, which are at the bottom</p> <p>11 of Exhibit A, other than page one. Okay.</p> <p>12 MR. GETTY: Okay.</p> <p>13 BY MR. HOFFMAN:</p> <p>14 Q Now sir, you are familiar with this Order,</p> <p>15 correct?</p> <p>16 A Correct.</p> <p>17 Q You read it at the time that it was issued</p> <p>18 on May 21, 2021?</p> <p>19 A Correct.</p> <p>20 Q And this was the decision that the Court</p> <p>21 made after a trial that was held from November 2020</p> <p>22 through March of 2021?</p> <p>23 A Correct.</p> <p>24 Q Okay. I am going to run through some</p>	<p style="text-align: right;">Page 108</p> <p>1 ask a witness, especially when this is an issue in</p> <p>2 this lawsuit. You know, do you agree with the Judge</p> <p>3 on this? I don't know how that doesn't get into</p> <p>4 attorney/client privilege.</p> <p>5 MR. HOFFMAN: Your Honor --</p> <p>6 THE COURT: hold on. How does it get into</p> <p>7 attorney/client privilege?</p> <p>8 MR. QUINLAN: Well first of all again, I think it</p> <p>9 speaks for itself, so it says what it says, but I</p> <p>10 think obviously counsel had discussed this issue in</p> <p>11 this Order with Mr. Getty. I don't think it is</p> <p>12 appropriate.</p> <p>13 THE COURT: No. No, it is not attorney/client</p> <p>14 privilege. The question is, do you, Mr. Getty, is the</p> <p>15 TTO's function to receive hold, manage, invest, and</p> <p>16 account or tax funds collected on behalf of the TTO's</p> <p>17 member districts. Can you ask that question again?</p> <p>18 MR. QUINLAN: And I would have no objection to</p> <p>19 that question, Your Honor.</p> <p>20 MR. HOFFMAN: Your Honor if I may.</p> <p>21 THE COURT: Yes.</p> <p>22 MR. HOFFMAN: First of all, during the trial,</p> <p>23 there were many, many objections during our</p> <p>24 presentation from the TTO's counsel. I hope we don't</p>
<p style="text-align: right;">Page 107</p> <p>1 specific portions of the findings of fact and</p> <p>2 conclusions of law, and I am going to be asking</p> <p>3 whether -- questions about them.</p> <p>4 So let me start off with -- if you will direct</p> <p>5 your attention to the second complete paragraph on</p> <p>6 page 1, and the last sentence states as follows: The</p> <p>7 TTO's function is to receive, hold, manage, invest,</p> <p>8 and account for tax funds collected on behalf of the</p> <p>9 TTO's member districts. Do you see that?</p> <p>10 A No, I do not. You said the second --</p> <p>11 Q Okay. The second paragraph begins with the</p> <p>12 word plaintiff. Yes?</p> <p>13 A Correct, okay.</p> <p>14 Q The last sentence -- would you be kind</p> <p>15 enough to read that last sentence to yourself, not out</p> <p>16 loud, beginning with the TTO's function.</p> <p>17 A Okay, I've read it.</p> <p>18 Q Okay, and you do not dispute -- as the</p> <p>19 Treasurer, you do not dispute this finding of fact for</p> <p>20 purposes of this case, correct?</p> <p>21 MR. QUINLAN: Your Honor, I am going to object to</p> <p>22 that. I don't think that is an appropriate question.</p> <p>23 First of all this speaks for itself. It is an Order</p> <p>24 from the Court. I don't think it is appropriate to</p>	<p style="text-align: right;">Page 109</p> <p>1 have a repeat of that. Secondly, I not asking for</p> <p>2 anything having to do with attorney/client privilege.</p> <p>3 Thirdly, this Treasurer has been taken actions that</p> <p>4 are at issue in this case, and we believe that one,</p> <p>5 they are inconsistent with the School Code, and two,</p> <p>6 they are inconsistent with George Esrig's Order.</p> <p>7 So, I need to find out rather than -- I need to</p> <p>8 find out whether the Treasurer is disputing any of the</p> <p>9 findings that Judge Esrig made. And the reason that</p> <p>10 they are relevant is Judge Esrig made many relevant,</p> <p>11 pertinent findings about how the TTO and its Treasurer</p> <p>12 operate and function, and what the School Code</p> <p>13 requires, and does not require of them. And how money</p> <p>14 is treated and handled.</p> <p>15 We don't have to pretend that this Order doesn't</p> <p>16 exist. This is what we are building upon, and I am</p> <p>17 making sure that the TTO is not disputing these</p> <p>18 findings, and that they can be applied, just as</p> <p>19 readily, in this case. It is highly relevant. It's</p> <p>20 critical.</p> <p>21 THE COURT: Well, I don't disagree that you are</p> <p>22 able to ask him whether or not you know, he agrees</p> <p>23 with the finding as contained in Judge Esrig's Order.</p> <p>24 What I am hoping is that you don't go through this</p>

<p style="text-align: right;">Page 110</p> <p>1 role 40-page Order and ask them findings, you know, to 2 comment on every single finding. 3 MR. HOFFMAN: Well, I am not. I have -- many of 4 them though are really important as to all of the -- 5 no, I am not going to go through the whole thing. 6 THE COURT: The issue is limited, right? The 7 issue is limited. Are they entitled to an injunction? 8 Right? 9 MR. HOFFMAN: Right. And so what we are going to 10 be looking at is what funds does the TTO have? What 11 authority do they have over those funds? And who gets 12 to make the decision as to how money is taken from 13 those funds, is it the Treasurer or is it the school 14 districts? 15 So, again, all these issues that Mr. Quinlan was 16 talking about earlier, these have been covered in 17 findings by Judge Esrig, and I need to make sure that 18 the Treasurer is not disputing these findings of fact, 19 and that we're on the same page in terms of what his 20 authority is. 21 THE COURT: What are you going to do when he 22 disagrees with one of the findings of fact? 23 MR. HOFFMAN: What I am going to do is point out 24 that for the same reasons, the Judge -- what I am</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. KALTENBACH: And Your Honor, we don't dispute 2 that we don't have money of our own. In terms of the 3 tax dollars that we're talking about here are school 4 districts' dollars. That's where we paid them the 5 money from the \$4-point million, \$5 million years ago. 6 We don't dispute any of that. 7 MR. HOFFMAN: They don't have any money, and they 8 don't have control over the districts. 9 THE COURT: But then Mr. Kaltenbach, if there is 10 no dispute, then you don't have any money, why isn't 11 there -- how is there an adequate remedy at law? 12 MR. KALTENBACH: Your Honor, because first of all 13 that doesn't mean there couldn't be a money judgment, 14 but I think the bigger issue is it is irreparable 15 harm, and that is -- and Mr. Getty will say this. 16 THE COURT: No. I am asking about an adequate 17 remedy right now. How is there -- if you don't have 18 any money, you admit you don't have any money, how is 19 there an adequate remedy? 20 MR. KALTENBACH: Because Your Honor, the judgment 21 was entered against my client, and they had to pay 22 money. That money would be an expensive office that 23 would then have to be invoiced to all of the other 24 school districts that would then pay that invoice, and</p>
<p style="text-align: right;">Page 111</p> <p>1 going to do is point out that this indicates this 2 Treasurer is acting beyond his lawful scope, and we're 3 going to be able to prove in this case, that him 4 taking actions inconsistent with the Judge's findings 5 that applied to the same claim that they're making now 6 that they made in the prior case are inconsistent. 7 MR. KALTENBACH: And Your Honor -- 8 THE COURT: Hold on, Mr. Kaltenbach. I am again 9 going to ask the question: How does this pertain to 10 whether there is irreparable harm and whether or not 11 there is an adequate remedy at law? 12 MR. HOFFMAN: Absolutely. For example, one of 13 the findings of Judge Esrig was that the TTO itself 14 has no money. So you know, that is absolutely 15 critical to our point that there's no adequate remedy 16 of law. And that there is irreparable harm for the 17 money being taken from our accounts because we can't 18 just get money from the TTO because it has no money of 19 its own. 20 The money that the TTO holds belongs to other 21 school districts, and that's what the Judge found, and 22 that's what we're establishing for the purposes of a 23 irreparable harm, and no adequate remedy. 24 THE COURT: Okay.</p>	<p style="text-align: right;">Page 113</p> <p>1 that's how we would get the money to pay it. We get 2 paid by the other school districts. 3 MR. HOFFMAN: Wow. 4 MR. KALTENBACH: Or there could be a claim on the 5 bonds (indiscernible). 6 THE COURT: (Indiscernible) Isn't the basis of 7 the claim, a misallocation, so wouldn't that be making 8 -- so go ahead. Mr. Hoffman, did you want to say 9 something? 10 MR. HOFFMAN: Well, I said, wow. This is an 11 argument that the TTO did not make and in its moving 12 papers that it would take -- it would treat -- what 13 they are saying is they would treat a judgment entered 14 against the TTO as an expense and bill it to all the 15 districts. 16 However, the statute regarding expenses talks 17 about expenses of the Treasurer's Office. So how a 18 judgment against the TTO would constitute an expensive 19 office, I can't begin to understand. But again, this 20 is the first we've heard of that. That's why we're 21 having this hearing, to flush out these issues. Look, 22 they admit they have no money, and they admit that all 23 of the money that they have belongs to the other 24 school districts.</p>

<p style="text-align: right;">Page 114</p> <p>1 So that's what -- that's exactly why we need this 2 injunction. So, you know, Your Honor has put your 3 finger right on the key points, here. But this is 4 what I am establishing with -- again, it is all laid 5 out, we don't have to hear Mr. Quinlan's or Mr. 6 Hoffman's analysis of what they think the accounts 7 are. 8 All we have to do is look at the findings, Judge 9 Esrig made and work off of those. And if this 10 gentleman is going to dispute those, then we need to 11 know that, and we need to know what is really being 12 disputed here. 13 MR. KALTENBACH: Your Honor, and again, Mr. Getty 14 will testify to this, if Mr. Hoffman would care to ask 15 him. If this Court said: You, know, Mr. Getty, I 16 appreciate you tried, but you think that LT was 17 entitled to a certain dollar amount, but the Court 18 disagrees and finds that you miscalculated that, and 19 they're entitled to more money, Mr. Getty would then 20 enforce the Court's Order by transferring funds from 21 the agency fund to LT's bank account. That is exactly 22 what he would do here. 23 MR. HOFFMAN: No (indiscernible) 24 MR. KALTENBACH: (Indiscernible).</p>	<p style="text-align: right;">Page 116</p> <p>1 correct? 2 A I do not. 3 Q And then it says: The districts make their 4 own budgeting decisions and determine what checks are 5 to be written against their funds. But the checks are 6 issued and signed by the Treasurer, correct? 7 A I do not dispute that. 8 Q Thank you. The TTO has no input into an 9 individual district's budgeting or spending decisions, 10 and may not spend the districts funds without 11 authorization from the district, citing Section 8-16 12 of the School Code; you do not dispute that, right? 13 A I do not dispute it. 14 Q Okay, next, paragraph, final sentence. 15 It says: The TTO does not receive tax revenue. 16 A I am sorry, where do you go? 17 Q Next paragraph. Beginning with "each 18 member". 19 A Okay. 20 Q Last sentence: The TTO does not receive tax 21 revenue independently at the school districts. It has 22 no independent source of funding and no funds of its 23 own. Do you dispute that in any way? 24 A I do not.</p>
<p style="text-align: right;">Page 115</p> <p>1 MR. HOFFMAN: Again, Your Honor, why are we 2 engaging in this? I don't want to engage in a back 3 and forth with Mr. Kaltenbach. I want to ask Mr. 4 Getty questions under oath. 5 THE COURT: That's right, all right. Let's 6 proceed by asking Mr. Getty questions. I am just -- I 7 am reluctant to -- go ahead, it is your case. You can 8 ask him if he agrees with the findings of fact. 9 BY MR. HOFFMAN: 10 Q Mr. Getty, sir. 11 A Yes. 12 Q I am going to ask you. I am going to read 13 you what -- I am going to ask you to take a look at 14 what the Judge found with respect to how the TTO works 15 in a general sense. And if you look at the bottom of 16 page 1, top of page 2, it says: All tax money 17 collected from the member districts are held and 18 invested by the TTO in a pooled account. But the 19 monies of each school district must be accounted for 20 separately in all respects, and their earnings from 21 such investments shall be separately, and individually 22 computed, and recorded and credited to the school 23 districts, citing Section 8-7 of the School Code. 24 And you have no disagreement with that finding,</p>	<p style="text-align: right;">Page 117</p> <p>1 Q Okay, and then just as background, at the 2 bottom of the page, the Court talks about LT being -- 3 having the largest fund balance and being about 25 4 percent of the pooled funds. And that's also 5 accurate, correct? 6 THE COURT: Can you tell me? Can you point it 7 out? Where are you? 8 MR. HOFFMAN: In the second to last paragraph on 9 page 2. 10 THE COURT: Page 2, okay, I am there. 11 MR. HOFFMAN: It talks about how we are one of 12 about twelve districts. These funds are managed by 13 the TTO. 14 BY MR. HOFFMAN: 15 Q Sir, do you see that? 16 A I see it. 17 Q And it says: During the relevant time 18 period, LT has had the largest fund balance of any of 19 the member districts usually owning approximately 25 20 percent of the total of pooled funds. And you do not 21 dispute that, correct? 22 A I do not. 23 Q Okay, page 22. Here is where we get to the 24 TTO's investment earnings claim in the 2013 lawsuit.</p>

<p style="text-align: right;">Page 118</p> <p>1 Do you see that?</p> <p>2 A I am at page 22.</p> <p>3 Q All right. And you see the heading for</p> <p>4 investment earnings claim?</p> <p>5 A I do see that.</p> <p>6 Q And what was that investment earnings claim,</p> <p>7 sir?</p> <p>8 MR. KALTENBACH: Your Honor, I will object on</p> <p>9 relevance again, going to the issue we're supposed to</p> <p>10 be (indiscernible).</p> <p>11 THE COURT: You froze up, Mr. Kaltenbach. What</p> <p>12 is your objection?</p> <p>13 MR. KALTENBACH: I am sorry, Your Honor. I am</p> <p>14 just objecting to relevance and that I think we ought</p> <p>15 to be talking about irreparable harm and no adequate</p> <p>16 remedy. But you know, it is a relevance objection. I</p> <p>17 understand it is a bench game, so --</p> <p>18 THE COURT: I will overrule. Go ahead.</p> <p>19 MR. HOFFMAN: By the way, for the record, I am</p> <p>20 not aware of the TTO conceding when Your Honor asked</p> <p>21 whether the TTO conceded --</p> <p>22 THE COURT: Right.</p> <p>23 MR. HOFFMAN: The other two points, I am not</p> <p>24 aware of a concession.</p>	<p style="text-align: right;">Page 120</p> <p>1 significantly Lyons Township High School. And at the</p> <p>2 trial, one of the former business managers of the high</p> <p>3 school --</p> <p>4 Q Okay, you know what, wait, wait. Stop,</p> <p>5 stop, stop, stop, stop. Mr. Getty, I did not ask you</p> <p>6 to tell me what people testified to at trial and</p> <p>7 anything that would be hearsay. I don't need a whole</p> <p>8 long --I just wanted you to succinctly explain to me</p> <p>9 what this claim was filed that the TTO filed in the</p> <p>10 2013 case. Would you be kind enough to tell me</p> <p>11 succinctly what the nature of that claim was?</p> <p>12 THE COURT: Do you have an objection, Mr.</p> <p>13 Kaltenbach.</p> <p>14 MR. KALTENBACH: I do, Your Honor. I object.</p> <p>15 Mr. Getty was attempting to answer the question. I</p> <p>16 don't think it is proper for Mr. Hoffman to simply cut</p> <p>17 him off and say, I want an answer more succinctly.</p> <p>18 THE COURT: I would agree with that. Mr.</p> <p>19 Hofmann, if you want, you are going to have to let the</p> <p>20 witness respond to the question that was asked, but</p> <p>21 you know, we will talk about.</p> <p>22 MR. HOFFMAN: I would ask that the witness be</p> <p>23 instructed not to offer his recollections of testimony</p> <p>24 during the trial, which is not --</p>
<p style="text-align: right;">Page 119</p> <p>1 THE COURT: Right. That's right.</p> <p>2 MR. KALTENBACH: That's correct.</p> <p>3 THE COURT: I am not, either.</p> <p>4 BY MR. HOFFMAN:</p> <p>5 Q Sir, what was the investment earnings'</p> <p>6 claim that the TTO asserted in the 2013 lawsuit; to</p> <p>7 your recollection?</p> <p>8 A Well right in front of me, I have Judge</p> <p>9 Esrig's --</p> <p>10 Q No, sir.</p> <p>11 A I can agree with the second paragraph under</p> <p>12 the heading one.</p> <p>13 Q Sir, I am asking you separately from the --</p> <p>14 you were the TTO's representative at the trial. What</p> <p>15 investment earnings' claim did the TTO assert in the</p> <p>16 2013 lawsuit?</p> <p>17 A So one of the duties of Treasurer is to</p> <p>18 allocate the quarterly interest that is earned by the</p> <p>19 total pooled investments. And there were, as part of</p> <p>20 the litigation, I wasn't there at the beginning, so I</p> <p>21 don't quite know the foundation of how it got to the</p> <p>22 point of litigation, but when it was being litigated</p> <p>23 there were many interest allocation errors that were</p> <p>24 made by the former Treasurer that seemed to benefit</p>	<p style="text-align: right;">Page 121</p> <p>1 THE COURT: Right.</p> <p>2 MR. HOFFMAN: I am asking for his testimony.</p> <p>3 THE COURT: Mr. Getty, just listen to the</p> <p>4 question and answer the question that is being asked.</p> <p>5 Okay, if there's anything else that your attorney</p> <p>6 would like for you to add at the end, he will ask you</p> <p>7 questions at the end and you will be able to clarify</p> <p>8 if you think there is more clarification that is</p> <p>9 needed, okay?</p> <p>10 BY MR. HOFFMAN:</p> <p>11 Q Mr. Getty, let me make this easier for you.</p> <p>12 Isn't it true that in the 2013 lawsuit, the TTO filed</p> <p>13 a claim, and one of the claims they brought was the</p> <p>14 investment earnings claim, and that claim they</p> <p>15 asserted that a prior Treasurer had paid LT about \$1.5</p> <p>16 million dollars too much in investment earnings from</p> <p>17 1995 through 2012?</p> <p>18 A Yes.</p> <p>19 Q Okay. Now, let's take a look at this first</p> <p>20 paragraph on page 22, under the heading, background.</p> <p>21 It's right in the middle.</p> <p>22 A I see it.</p> <p>23 Q So it says, As discussed above, the</p> <p>24 statutory scheme requires the TTO to collect, hold,</p>

<p style="text-align: right;">Page 122</p> <p>1 and pool for investment purposes, invest the money of 2 the member school districts. However, the TTO is 3 required to separately account for the funds of each 4 member district. Like expenses, investment income 5 must be allocated to the member districts based on the 6 ratio of the district funds to total funds held by the 7 TTO at the time of allocation. 8 And you do not dispute that, correct? 9 A I do not. 10 Q It says: The TTO must keep separate books 11 of account for the member districts reflecting all 12 receipts ,expenses, allocated investment income, and 13 fund balances. The TTO must maintain an account 14 balance for each member district, including the 15 district's balance in the pooled funds. 16 And you do not dispute that finding, do you? 17 A I do not dispute the sentence, but I dispute 18 the way that you have phrased the accounts to the 19 Judge at the beginning of this. This is nothing like 20 BMO Harris. You've made -- 21 Q Okay, wait, wait, wait. 22 THE COURT: All right. I am going to -- the 23 objection. Mr. Getty, you -- answer the question that 24 was asked.</p>	<p style="text-align: right;">Page 124</p> <p>1 tied to the account balance. 2 Q Mr. Getty, I read those two sentences 3 together. 4 MR. KALTENBACH: Objection, Your Honor, 5 argumentative. 6 THE COURT: All right. Let's not get 7 argumentative. I sustain the objection. 8 BY MR. HOFFMAN: 9 Q Mr. Getty, as the Treasurer, did you, in 10 fact, and do you, in fact, maintain an account balance 11 for each member district including the district's 12 balance in the pooled funds? 13 A Yes, it is the general ledger. 14 Q And as the Treasurer, did you, in fact, and 15 do you, in fact, keep separate books of account for 16 the member districts reflecting all receipts, 17 expenses, allocated investment income, and fund 18 balances? 19 A We do. 20 Q Okay. Now, let's turn to page 23, please. 21 And at the bottom of the page, there's a paragraph, 22 the last paragraph. It says: It cannot be disputed 23 that analysis of the TTO's claim, and this is the 24 investment earnings claim.</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. HOFFMAN: I move to strike the -- 2 THE COURT: I will strike it as nonresponsive. 3 BY MR. HOFFMAN: 4 Q Okay, Mr. Getty, I am asking specific 5 questions, and I would appreciate your cooperation in 6 answering those questions. Yes? Okay? 7 A Sure. 8 Q Thank you. Do you dispute the finding of 9 the Court that I had just read? 10 A I will say I mostly agree with it. 11 Q What don't you agree with? What do you 12 dispute? 13 A I would say the sentence before and the 14 sentence after need to be taken together. So if you 15 take it from the TTO must keep separate books and 16 accounts for the member districts reflecting all 17 receipts, expenses, allocated investment income, and 18 fund balances, I completely agree with that and think 19 it also leads into the second question. 20 Where it says, the TTO must maintain an account 21 balance for each member district, including the 22 district's balances in the pooled funds. Those two, 23 they need to be together. They are not separate 24 things. The fund balance is essentially very closely</p>	<p style="text-align: right;">Page 125</p> <p>1 THE COURT: Sorry, where are you? 2 MR. HOFFMAN: I am sorry. I am on page 23, last 3 paragraph. 4 THE COURT: Here it is. I see it. 5 BY MR. HOFFMAN: 6 Q It cannot be disputed analysis of the TTO's 7 claim, and that's the investment earnings claim, is 8 hampered by an absence of source documents. The TTO 9 concedes that there is no way to know, precisely, how 10 much investment income was earned in any year during 11 the Healy era. And therefore, precisely how much 12 income wage should have been allocated to each member 13 district. 14 You do not dispute that finding, do you? 15 A I do not. 16 MR. QUINLAN: Your Honor, I am going to object to 17 -- I think it is not a finding of the Court. I am 18 going to object. I think that's a misleading 19 question. 20 THE COURT: No, I am going to overrule the 21 objection. Go ahead. 22 MR. HOFFMAN: Thank you. 23 BY MR. HOFFMAN: 24 Q Now, let's turn to page 31.</p>

<p style="text-align: right;">Page 126</p> <p>1 A I am there.</p> <p>2 Q Can you go in the first paragraph to the</p> <p>3 third sentence, and it says: While the TTO was</p> <p>4 permitted to and does pool funds for investment</p> <p>5 purposes, each district has a specific fund balance</p> <p>6 and operating funds for each are held in a separate</p> <p>7 agency account or accounts. Do you dispute that</p> <p>8 finding of fact?</p> <p>9 A I agree with it. There's a lot to unpack,</p> <p>10 there.</p> <p>11 Q Okay, but you agree with it. And as</p> <p>12 Treasurer, did you and do you maintain a specific fund</p> <p>13 balance for each district?</p> <p>14 A I do.</p> <p>15 Q And are operating funds for each district</p> <p>16 held in a separate agency account or accounts?</p> <p>17 A No.</p> <p>18 Q In fact, and during your tenure?</p> <p>19 A Operating funds and agency funds or accounts</p> <p>20 are different. So that's why I say that there's a lot</p> <p>21 to unpack here.</p> <p>22 Q Okay. Well, I am going to try to keep</p> <p>23 things simple here. Let's move on to the next</p> <p>24 sentence. It says: The TTO is not entrusted with the</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. HOFFMAN: Well, I don't think there's an</p> <p>2 objection, sir. I did not hear one.</p> <p>3 MR. KALTENBACH: I was trying to object, I</p> <p>4 apologize.</p> <p>5 THE COURT: What is the objection, Mr.</p> <p>6 Kaltenbach?</p> <p>7 MR. KALTENBACH: Again, Mr. Hoffman is</p> <p>8 mischaracterizing this is a finding of fact and</p> <p>9 conclusion of law.</p> <p>10 THE COURT: It doesn't matter if it is a finding</p> <p>11 of fact or a conclusion of law. He's asking whether</p> <p>12 he agrees with the statement as it is phrased. Okay?</p> <p>13 MR. KALTENBACH: Fair enough.</p> <p>14 THE COURT: All right.</p> <p>15 MR. HOFFMAN: Your Honor, may I simply say in the</p> <p>16 Order, in the first paragraph, on page 1, it talks</p> <p>17 about the trial, and it says: The Court, having heard</p> <p>18 blah, blah, blah, makes the following findings of fact</p> <p>19 and law.</p> <p>20 THE COURT: Okay.</p> <p>21 MR. HOFFMAN: So I don't know how --</p> <p>22 THE COURT: Isn't it fair to him if he agrees</p> <p>23 with this statement?</p> <p>24 MR. HOFFMAN: Yes.</p>
<p style="text-align: right;">Page 127</p> <p>1 use of those funds. To the contrary, the TTO may not</p> <p>2 use or spend a district funds without express</p> <p>3 authorization of that district.</p> <p>4 Do you dispute that statement?</p> <p>5 A I do not.</p> <p>6 Q Okay. Below the quotation, when it talks</p> <p>7 about you not serving as a Trustee.</p> <p>8 A I don't see that.</p> <p>9 Q After the citation to 105 ILCS, 5/8-16, it</p> <p>10 reads: Instead, the Treasurer simply holds the funds</p> <p>11 as an agent or custodian and dispersing them only in</p> <p>12 accordance with a specific direction of the district.</p> <p>13 Simply by filing this lawsuit, the TTO concedes</p> <p>14 this point. The TTO seeks declaratory relief from the</p> <p>15 Court because it recognizes that it cannot debit LT's</p> <p>16 fund balance without LT's permission.</p> <p>17 Do you dispute that finding of fact and</p> <p>18 conclusion of law of the Court?</p> <p>19 A I can hear Mr. Kaltenbach objecting.</p> <p>20 Q I don't think he is going to save you from</p> <p>21 this.</p> <p>22 MR. KALTENBACH: You know, Your Honor, I would</p> <p>23 ask you to strike that comment. The commentary is</p> <p>24 unnecessary.</p>	<p style="text-align: right;">Page 129</p> <p>1 BY MR HOFFMAN:</p> <p>2 Q So do you? You don't dispute that</p> <p>3 statement, do you, sir?</p> <p>4 A I am reading it. I am sorry.</p> <p>5 Q Sure, take your time.</p> <p>6 A I would dispute it because every time a</p> <p>7 quarterly interest comes about, it is the Treasurer</p> <p>8 that distributes that to the districts. It does not</p> <p>9 have any specific direction from the district, so I</p> <p>10 would disagree with that.</p> <p>11 Q So the -- in terms of the funds of the</p> <p>12 district, sir, isn't it true that in the 2013 lawsuit</p> <p>13 the TTO filed a lawsuit and sought declaratory relief</p> <p>14 from the Court because it recognized that it couldn't</p> <p>15 debit LT's fund balance without LT's permission?</p> <p>16 Isn't that true?</p> <p>17 A Again, I wasn't there at the time of the</p> <p>18 lawsuit, so I don't -- I was not privy to those</p> <p>19 discussions.</p> <p>20 THE COURT: Well, isn't also what you are</p> <p>21 describing, it is not a debit, it is credit, right?</p> <p>22 MR. HOFFMAN: No.</p> <p>23 MR. GETTY: It says "disperses" in here.</p> <p>24 THE COURT: Isn't he describing allocating</p>

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1 interest earned? Wouldn't that be a credit to the
 2 account?
 3 MR. HOFFMAN: Your Honor if I may.
 4 THE COURT: Yes.
 5 MR. HOFFMAN: That's what Mr. Getty spoke to as
 6 an example. However, what the Court is talking about
 7 here is debiting money from LT's account for its
 8 investment earnings claim as well as the other claims
 9 that are brought in the case, right? So let me just
 10 establish a foundation for that, right, if I could?
 11 THE COURT: All right.
 12 BY MR. HOFFMAN:
 13 Q So Mr. Getty, even though you weren't there
 14 at the time of the filing of the lawsuit, you were
 15 Treasurer at the time that LT filed, its second
 16 amended complaint in the lawsuit in September of 2019;
 17 isn't that true?
 18 A Correct.
 19 Q Right. And you're familiar with the claims
 20 that the TTO brought in that case, yes?
 21 A Correct.
 22 Q And one of the -- and I can show you a copy
 23 of the Complaint, but one of the things that you asked
 24 for was the Court's permission to debit LT's agency

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1 account in the amount on a specific number that was
 2 about \$1.5 million dollars reflecting over-allegations
 3 of investment earnings that the TTO had made to LT
 4 from 1995 to 2012, correct?
 5 A Correct.
 6 Q Okay. So I guess my question is, if the TTO
 7 in the prior lawsuit felt that it had to ask the Court
 8 for permission to debit LT's account for an over-
 9 allocation of investment earnings, why have you now
 10 decided that the TTO has the authority to debit LT's
 11 fund balance for investment earning over-allegations
 12 unilaterally without permission of the Court?
 13 MR. KALTENBACH: And, Your Honor, I will object.
 14 I don't think the witness has testified that he
 15 decided --
 16 THE COURT: I think it assumes facts not in
 17 evidence. I will sustain the objection.
 18 MR. HOFFMAN: Okay.
 19 BY MR. HOFFMAN:
 20 Q Sir, I am going to ask you this question in
 21 the context of the Resolution, so we will get there
 22 when I show you the Resolution. Sir, here is my
 23 question. You did an analysis on investment earnings
 24 that became the basis for a Resolution that the

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1 Trustees passed on September 23, 2021, correct?
 2 A Correct. The Trustees actually, I believe
 3 took a vote in either November or December of 2020, y
 4 and asked for an analysis of the interest income,
 5 correct.
 6 Q So I can go back to 202, but I don't think
 7 the Court wants to hear the whole history of the
 8 world. So my question was not talking about 2020, and
 9 I did not ask you about other proceedings, so I would
 10 appreciate you're focusing on my question, instead.
 11 Sir, again, my question is this, did you do an
 12 analysis of investment earnings and allocations to
 13 districts that became the benefit of -- that became
 14 the basis upon which the TTO Trustee's on September
 15 23, 2021, passed a Resolution that would reallocate
 16 certain investment allocations?
 17 A And I just want to express that I was
 18 directed to by the Trustees. That was not anything
 19 that I pulled out of thin air, but yes.
 20 Q I did not ask you --
 21 MR. HOFFMAN: Your Honor, I did not
 22 (indiscernible).
 23 THE COURT: He gave you an answer.
 24 BY MR HOFFMAN:

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1 Q Yes. The answer is yes, correct? You did
 2 the analysis. It was the basis of the Resolution,
 3 right? Yes?
 4 A Correct.
 5 Q And you are saying that you did it at the
 6 request of the Trustees?
 7 MR. KALTENBACH: Can I object?
 8 THE COURT: Hold on. What is your objection, Mr.
 9 Kaltenbach?
 10 MR. KALTENBACH: AS to lack of foundation for Mr.
 11 Getty knowing the basis of the Trustee votes.
 12 THE COURT: As to Mister -- well, no.
 13 MR. KALTENBACH: It is a lack of foundation. Mr.
 14 Getty doesn't know why the Trustees voted the way they
 15 voted. He can testify this is what I presented to the
 16 Trustees, and this is how he knows this.
 17 THE COURT: Well, he testified that he was asked
 18 to prepare this analysis, right?
 19 MR. KALTENBACH: Yes. Absolutely.
 20 THE COURT: That's all he testified to, so -- all
 21 right. Go ahead, Mr. Hoffman.
 22 MR. HOFFMAN: Your Honor, the question was
 23 whether it was the basis for the Trustees' Resolution.
 24 It employs the exact same numbers that Mr. Getty came

<p style="text-align: right;">Page 134</p> <p>1 up with. I don't understand why counsel is objecting. 2 I wasn't asking what was in the minds of the Trustees. 3 THE COURT: I agree, I agree. 4 MR. HOFFMAN: Thank you. So, hopefully, we can 5 just not be detoured in that manner. 6 BY MR. HOFFMAN: 7 Q I guess my question is, do you have any 8 understanding as the Treasurer why the TTO did not 9 seek the Court's permission to debit LT's funds for 10 any over-allocation of investment earnings around the 11 September 2021 time period. 12 MR. KALTENBACH: And, Your Honor, I will object 13 to the extent the question is requiring Mr. Getty to 14 reveal, you know, legal strategy discussed by Mr. 15 Getty or the Trustees with their counsel. The why we 16 filed the lawsuit or chose to do one thing or another, 17 I think that does (indiscernible). 18 THE COURT: I don't know that that was the 19 question. Can the Court reporter read back the 20 question? 21 (WHEREUPON, record was 22 read as requested.) 23 BY THE WITNESS: 24 A The Trustees I know at the time thought that</p>	<p style="text-align: right;">Page 136</p> <p>1 great. I could agree with what, you know, you said, 2 but that agreement is limited in this scope. In my -- 3 Q So what did the Court decide with respect to 4 the statute of limitations, in your understanding? 5 A Can you give me a certain point to look at? 6 Again, this is something I defer to legal counsel. 7 THE COURT: You can testify about what you 8 understand the Court's ruling on the statute of 9 limitations to be. 10 BY MR. HOFFMAN: 11 Q Mr. Getty, isn't it true that -- 12 THE COURT: Mr. Hofmann, you have a question 13 pending. Do you want an answer? 14 MR. HOFFMAN: Please. 15 THE COURT: Mr. Getty, do you do have an answer? 16 MR. GETTY: It was my understanding that the 17 statute of limitations was for the initial claims that 18 were brought in 2013, that they were limited in scope, 19 and that's what the limitations applied to. 20 BY MR. HOFFMAN: 21 Q But you understood that the investment 22 earnings claim that the TTO asserted in the 2013 23 lawsuit, the Judge held that that claim was subject to 24 a five-year statute of limitations, correct?</p>
<p style="text-align: right;">Page 135</p> <p>1 they had the authority to do so. 2 Q Okay. So do you know why in the 2013 3 lawsuit, they sought the Court's permission to debit 4 LT's account for investment earning -- an investment 5 earnings' claim and -- but did not go the same route 6 in recent months with regard to an investment 7 earnings' issue? 8 A Well, the Trustees took Judge Esrig's Order 9 into consideration. He pretty much lays out, you 10 know, what he felt would be a fair and equitable 11 interest allocation examination, and those guidelines 12 were followed in my analysis. 13 Q Okay. Now Judge Esrig also decided that in 14 regard to the investment earnings claimed the TTO, 15 that a five-year statute of limitations applied to 16 that claim, correct? 17 A Again, I am not a lawyer. I do not know when 18 it comes to, you know, these types of questions. I do 19 not know what was intended with the five-year statute 20 of limitations because that is something I always 21 defer to our attorneys. 22 Q Did you read the opinion, sir? 23 A I did. But when it comes to an opinion of 24 statute of limitations, my knowledge is not that</p>	<p style="text-align: right;">Page 137</p> <p>1 A (Unresponsive). 2 Q Yes, no, I don't know. 3 A I do not know. 4 MR. KALTENBACH: (Indiscernible). 5 MR. HOFFMAN: Excuse me. 6 THE COURT: Hold on, Mr. Hoffman. What's your 7 objection, Mr. Kaltenbach? 8 MR. KALTENBACH: It is argumentative when he 9 says, yes, no, I don't know. 10 THE COURT: I will agree with that and just 11 admonish Mr. Hoffman. Let Mr. Getty answer the 12 question. 13 MR. HOFFMAN: Okay. Fair enough. 14 BY MR. HOFFMAN: 15 Q Sir, would you look at page 32 of the Order, 16 please. 17 A All right. 18 Q In the second complete paragraph it says: 19 The TTO filed this lawsuit on October 16, 2013. 20 Therefore, as to any payment made on LT's behalf for 21 audit expenses, that was its first claim. Any credit 22 issued to LT for accounting-related services. And 23 then it says: Any credit issued LT for investment 24 earnings on or before October 16, 2008. The TTO's</p>

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1 claim, even if otherwise viable, is barred by the
 2 statute of limitations. Do you see that?
 3 A I do.
 4 Q So does this help you to remember that the
 5 Court held that the TTO's investment earnings' claim
 6 was subject to the five-year statute of limitations?
 7 MR. KALTENBACH: Your Honor, I will object. I
 8 don't think the witness testified he couldn't
 9 remember. He was testifying as his understanding. So
 10 I think Mr. Hoffman is trying to put words in his
 11 mouth, rather than trying to refresh a recollection.
 12 THE COURT: What was the question? How did you
 13 ask the question, Mr. Hoffman?
 14 MR. HOFFMAN: Well, I referred Mr. Getty to the
 15 Court's decision, which is pretty clear.
 16 THE COURT: I know.
 17 MR. HOFFMAN: I gave him the benefit of the
 18 doubt, and it seemed like he wasn't sure, did not
 19 remember what the Judge decided. So I asked him if
 20 the ruling that I read helped him to remember what the
 21 Judge decided with respect to the investment earnings'
 22 claim.
 23 THE COURT: Okay. Does the part of the Order
 24 that you just read refresh your recollection as to

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1 what the Judge decided, Mr. Getty?
 2 MR. GETTY: Yes, it is my understanding was that
 3 the credit issued to LT for investment earnings, that
 4 that was limited in scope and what was put in front of
 5 Judge Esrig.
 6 BY MR. HOFFMAN:
 7 Q Okay. What was put before Judge Esrig? The
 8 investment earnings' claim was subject to a five-year
 9 statute of limitations, according to the Judge, yes?
 10 A Right. Only the interest income related to
 11 District 204, that analysis did not take any other
 12 districts into consideration.
 13 MR. HOFFMAN: I am not -- Your Honor, I would --
 14 THE COURT: He did not ask you about any other
 15 districts.
 16 MR. HOFFMAN: Here is the problem, Judge, and I
 17 would ask that Your Honor admonished the witness. He
 18 keeps -- what he's trying to do is he's trying to make
 19 a distinction between the claim that the TTO presented
 20 in the last case, and what they're doing now.
 21 And so we get that. We read all the papers; I
 22 get it. I don't need in every single answer to be
 23 reminded by Mr. Getty that believes he did something
 24 different. The Court is going to ultimately decide

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1 whether that was or was not different. So would you
 2 ask Mr. Getty to stop interjecting that into so many
 3 of his answers because it is --
 4 THE COURT: Well, I am going to ask him -- I am
 5 going to ask Mr. Getty if he would please answer the
 6 question that's being asked. And to the extent that
 7 he, you know, provides an answer that's non-
 8 responsive, the Court will strike the any non-
 9 responsive part of the answer, okay?
 10 MR. HOFFMAN: Okay.
 11 MR. GETTY: I apologize.
 12 MR. HOFFMAN: Okay.
 13 BY MR. HOFFMAN:
 14 Q So Mr. Getty, we have established that the
 15 Court for the claim that the TTO presented in the
 16 prior lawsuit on investment earning claim, five-year
 17 statute of limitations apply, correct?
 18 A Correct.
 19 Q They can only go back five years from the
 20 date they filed the lawsuit, right?
 21 A Correct.
 22 Q Okay. So tell me why your analysis on
 23 investment earnings goes back to 1995 and did not go
 24 back only five years?

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1 A Because that's what I was instructed to do
 2 by the Trustees.
 3 Q Okay. So in fulfilling, did you ever
 4 responded the Trustees and say: Hey, what about this
 5 five-year issue from the Judge? Can I really go back
 6 more than five years? Did you ever ask that question
 7 of any of the Trustees?
 8 A Again, I am not the legal counsel, so I did
 9 not (indiscernible).
 10 Q No, I did not ask whether you have a law
 11 degree. I asked whether you asked the Trustees a
 12 question upon being given a direction to do analysis
 13 about this -- if that had anything to do with a five-
 14 year limitations. Did you ask the Trustees that
 15 question when they gave you the assignment, or at any
 16 subsequent time?
 17 A I did not.
 18 Q Okay. Why not? Was that a concern of yours
 19 in any way that you might only be able to go back five
 20 years based on the Judge's order? Is that a concern
 21 of yours?
 22 A I highlighted in the beginning of one of the
 23 questions, it is not evasive. The analysis started in
 24 2020 before this quarter, so this was not -- I would

<p style="text-align: right;">Page 142</p> <p>1 say when the first part of the analysis was done, this 2 paper did not exist. 3 THE COURT: What paper are we talking about? The 4 Order? 5 MR. GETTY: The Judge's Order. 6 THE COURT: Okay. 7 BY MR. HOFFMAN: 8 Q Right. But after the Judge's Order came 9 out, you read it, yes? 10 A I did. 11 Q So, at that point, did you have any concerns 12 about whether you could go back more than five years 13 in your analysis of investment earnings? 14 A We sought legal counsel. 15 Q I did not ask you that. I asked if you had 16 any concerns after reading this Order about whether 17 you could properly go back more than 5 years and 18 looking at investment earnings and doing the analysis 19 that the Trustees ask you to do? 20 MR. GETTY: Judge, I can hear Mr. Kaltenbach 21 objecting. 22 MR. KALTENBACH: I am sorry. I am sorry. I will 23 just keep off mute and be quiet. Your Honor, I will 24 object. I do think at this point we are well into the</p>	<p style="text-align: right;">Page 144</p> <p>1 THE COURT: Go ahead, Mr. Hoffman. 2 MR. HOFFMAN: Thank you, Judge. 3 BY MR. HOFFMAN: 4 Q Now, I still need an answer to the question, 5 Mr. Getty, if you could, please. Do you remember the 6 question after all? 7 A I believe it was, did I have any -- 8 Q Here, let me just make it faster. After you 9 read the Judge's opinion which said that the TTO's 10 investment earnings' claim was subject to a five-year 11 statute of limitations, did you have any concerns 12 about whether the analysis you were doing for the 13 Trustees, separately, whether that could properly go 14 back more than five years? 15 A I sought, again, legal counsel in the 16 Judge's ruling, if I can go forward with it. It 17 wasn't that specific thing; it was in the Judge's 18 Order. I do not remember specifically discussing this 19 matter. 20 Q So the analysis that you did outside of the 21 lawsuit, it is your belief that it was proper for you 22 to go all the way back to 1995 and looking at 23 investment earnings, correct? 24 A Again, the Trustees asked me to, and I</p>
<p style="text-align: right;">Page 143</p> <p>1 merits of this case, beyond the scope of a preliminary 2 injunction hearing. 3 Well, why did he go back five years versus no 4 years versus twenty years, what does that have to do 5 with the preliminary injunction? 6 THE COURT: Well, I mean, we're talking about all 7 four elements of the preliminary injunction, right? 8 And so doesn't he have to prove a likelihood of 9 success on the merits? Is that what this is going 10 towards, Mr. Hoffman? 11 MR. HOFFMAN: Yes, exactly. 12 THE COURT: Okay, overruled. Go ahead. Mr. 13 Kaltenbach, you are welcomed to waive argument on 14 those two issues or, you know, agree that those two 15 elements have been established for the purpose of 16 hearing, an evidentiary hearing. But if you want to 17 do that, he's going to be able to ask questions. 18 MR. KALTENBACH: Your Honor, we're not -- I think 19 Mr. Quinlan said this earlier, we don't want to waive 20 anything. 21 THE COURT: All right. 22 MR. KALTENBACH: I thought we were going to try 23 to focus on the other two, but I will get out of the 24 way.</p>	<p style="text-align: right;">Page 145</p> <p>1 (indiscernible). 2 MR. HOFFMAN: I didn't ask you what the Trustees 3 ask you. I didn't ask you what you did. Patrick, 4 would you be kind enough to read my question back? 5 And sir, would you answer my question, please. 6 (WHEREUPON, record was 7 read as requested.) 8 BY THE WITNESS: 9 A Yeah, I believe it is proper because that's 10 what was asked of me by the Trustees. 11 Q Okay. Now, would you turn to page 34 or the 12 Order, please. 13 A I am on 34. 14 Q Okay. Okay, the first full paragraph begins 15 with "the Court finds". and we're in the section that 16 discusses latches and the diligence of the Trustees 17 with respect to the claims in the lawsuit. 18 Do you have any understanding of what the latches 19 defense that LT asserted was? 20 A I do not. 21 Q Okay. And so, it does say here, it talks 22 about how far the claims went back, and it talks about 23 the investment earnings' claim dating back to 1995, 24 correct? Do you see that?</p>

<p style="text-align: right;">Page 146</p> <p>1 A The second paragraph, second or third 2 sentence?</p> <p>3 Q The first full paragraph, see that?</p> <p>4 A Right. I do.</p> <p>5 Q And then it says in the middle of the 6 paragraph, it says, as to all the claims, there was 7 concrete evidence of missing documents, dead 8 witnesses, and faded and untrustworthy memories, key 9 factual issues relating to all three claims are 10 obscured by time. Penalty has demonstrated actual 11 prejudice in defending all three claims due to the 12 absence of evidence.</p> <p>13 Do you dispute the Judge's findings in this 14 respect?</p> <p>15 A Some of these words, I do not understand the 16 legal definition. So and it says actual prejudice, I 17 do not know. I agree that the Judge said it. Again, 18 I don't know the interpretation, so I just want to --</p> <p>19 Q Putting aside then, fair enough. Putting 20 aside the last sentence. And just the part about 21 concrete evidence of missing documents, dead 22 witnesses, faded and untrustworthy memories, and key 23 factual issues relating to all three claims being 24 obscured by time. Do you dispute that finding of the</p>	<p style="text-align: right;">Page 148</p> <p>1 I think it is kind of a when do you stop feeding 2 (indiscernible).</p> <p>3 THE COURT: I overruled the objection. If Mr. 4 Getty disagrees, he can disagree on the record. Go 5 ahead, Mr. Getty. What was the question, Mr. Hoffman?</p> <p>6 BY MR. HOFFMAN:</p> <p>7 Q Mr. Getty, remember we looked at the Court's 8 analysis of the investment earnings' claim and the 9 Court said it cannot be disputed that analysis of the 10 TTO's claim is hampered by the absence of source 11 documents; do you remember that?</p> <p>12 A I do.</p> <p>13 Q And the Court went on to say the TTO 14 concedes, there is no way to know, precisely, how much 15 investment income is earned in any year. Remember 16 that finding? And you did not dispute that, correct?</p> <p>17 A I did not.</p> <p>18 Q And you understand that source documents 19 mean bank statements, investment account activities. 20 Something that specifically identifies and documents 21 the interest earned, right? You understand what 22 source documents are, don't you, as the Judge used 23 that term?</p> <p>24 A I do understand the term source documents.</p>
<p style="text-align: right;">Page 147</p> <p>1 Court?</p> <p>2 A No.</p> <p>3 Q In light of this finding, then why did you 4 think it was proper for your analysis to go back to 5 1995 in looking at investment earnings?</p> <p>6 A Because all of the documents were mostly 7 there, we had all of the interest allocations that 8 were on the books, and I believe here the Judge is 9 speaking to the interests that was generated over that 10 time period, as a whole.</p> <p>11 So I agree with the Judge, but also the analysis 12 I performed, I would say that, you know, dead 13 witnesses and faded untrustworthy memories did not 14 factor into my analysis.</p> <p>15 Q Isn't it true that your analysis is based 16 solely on the TTO's internal records and not source 17 documents?</p> <p>18 MR. GETTY: Again, Barry, you are on mute.</p> <p>19 MR. KALTENBACH: I object, Your Honor. I think it 20 is a leading question. It assumes that the TTO is 21 internal records are not source documents.</p> <p>22 THE COURT: He can ask leading questions, can't 23 he?</p> <p>24 MR. KALTENBACH: I think it is misleading because</p>	<p style="text-align: right;">Page 149</p> <p>1 Q Yeah, and isn't it true that in referring to 2 source documents, were talking about bank statements 3 and the like; something that actually verifies the 4 earnings?</p> <p>5 Q Well, again, the Court -- the litigation 6 that preceded this that talked about interests in 7 total. Again, my analysis did not look at the 8 original source documents of the interest that was 9 earned. My analysis simply looked at the amount of 10 interest that was allocated amongst the member 11 districts to see if that was fair and equitable.</p> <p>12 So the source documents that I looked at would be 13 the general ledger, which was the source document for 14 a lot of, you know, pieces of evidence that were 15 produced by both sides. So again, my source documents 16 were just the general ledger of the TTO.</p> <p>17 Q And that's an all internal TT -- strike 18 that.</p> <p>19 Your analysis is based entirely on TTO's internal 20 records, correct?</p> <p>21 A It is the general ledger of the Treasurer's 22 office, and that general ledger would have been 23 audited by, you know, 13 different -- or now there are 24 a lot of different auditing firms, but all of those</p>

<p style="text-align: right;">Page 150</p> <p>1 general ledgers undergo an annual audit at the end of 2 each year 3 MR. HOFFMAN: Move to strike the answer as non- 4 responsive. 5 THE COURT: How it is non-responsive? 6 MR. HOFFMAN: What he is trying to do is he is 7 not -- I asked him whether (indiscernible). 8 THE COURT: (Indiscernible). 9 MR. HOFFMAN: Based on internal records. 10 THE COURT: Right. 11 MR. HOFFMAN: Now, what he is trying to say is 12 the internal records are great (indiscernible). 13 THE COURT: (Indiscernible), all right. I will 14 sustain your objection and I will strike the part of 15 the answer that is nonresponsive. 16 MR. HOFFMAN: Again, Mr. Getty, please focus on 17 my question. 18 BY MR. HOFFMAN: 19 Q Your analysis of investment earnings is 20 based solely on internal records of the TTO, correct? 21 A Correct. 22 Q Now, do you remember that one of the grounds 23 that Judge Esrig relied -- I am sorry, I heard some 24 background -- was there an objection?</p>	<p style="text-align: right;">Page 152</p> <p>1 forensic audit in the 2012-2013 time period given that 2 your analysis goes all the way back to 1995? 3 A Well, I do not know the legal definition of 4 defalcation. So I don't know what that word means 5 when it is tied to forensic audit. So I don't know if 6 I can give you -- if I have a definition, I will try 7 to understand how my analysis differed. 8 Q Did I use the word defalcation in my 9 question? 10 A It is here and you're asking me for my 11 interpretation based on this sentence on how it 12 differed from mine. And again, I am just -- if I can 13 just know the definition. 14 Q Don't you know that Healy defalcation --sir, 15 I will be glad to help you with that. Healy stole 16 over a million dollars of school district funds when 17 he was the Treasurer of the TTO. Yes? 18 A I do know that. 19 Q And he went to prison? 20 A I do know that. 21 Q Okay. So I think we can all agree, that's 22 what the Judge is referring to, but that wasn't my 23 question. My question was the Judge rejected the 24 TTO's investment earnings' claim asserting the lawsuit</p>
<p style="text-align: right;">Page 151</p> <p>1 Sir, do you recall that one of the grounds that 2 Judge Esrig relied on in rejecting the TTO's 3 investment earnings' claims was that in the 2012-2013 4 time period, the Trustees failed to conduct a forensic 5 audit after they learned about all the problems with a 6 Treasurer Healy; do you recall that? 7 A I don't. I know a forensic audit was 8 mentioned, I don't know where it was mentioned. 9 Q Okay. Would you look at the bottom of page 10 34. 11 A Yes. 12 Q And it says, the very last four words: As 13 to the investment, and then turn it to the next page, 14 earnings' credits, the C finds the Trustees lack 15 diligence when they failed to conduct a forensic audit 16 after learning of Healy's defalcation and the 17 possibility of over-allocations; do you see that? 18 A I do. 19 Q Okay, and that's a problem the Judge 20 identified with the investment earnings' claim that 21 the TTO presented in the lawsuit, right? 22 A If he listed it here, yes. 23 Q So how then does your analysis overcome that 24 problem of the failure of the TTO to conduct a</p>	<p style="text-align: right;">Page 153</p> <p>1 in part because the Trustees had refused to perform a 2 forensic audit in 2012 and 2013. 3 And my question to you is why then do you think 4 it was appropriate to go back in your analysis to 5 1995, given the Judge's identification of the problem 6 with no forensic audit? 7 A And I don't know if I -- I don't have an 8 opinion on it. 9 Q Okay. Would you turn to page 37, please, 10 and we are almost done with the Order; I just have a 11 very small number -- I just have two more points here. 12 And then I notice it is two o'clock, so maybe I will 13 just finish up with this, Your Honor, and we will 14 break for your two o'clock meeting. 15 THE COURT: I set that meeting for another day, 16 so we can keep going. 17 MR. HOFFMAN: Oh, well thank you. 18 THE COURT: Let me get to where we are, hold on. 19 BY MR. HOFFMAN: 20 Q Mr. Getty, we are on page 37 of the Order. 21 A I am there. 22 Q It says in the final paragraph on this page, 23 it says as it was discussed above for cash flow 24 purposes, the TTO maintains operating accounts for the</p>

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1 member districts against which at the direction of and
 2 with the approval of the respective district, checks
 3 are written for the payment of bills. The remainder
 4 of the district's funds are pooled an investment
 5 account which is made up of subaccounts for the
 6 various investments.
 7 As to the pools' funds, each district has a
 8 precise account balance. Do you see that?
 9 A I do.
 10 Q Okay. And do you dispute any of those
 11 findings?
 12 A I do not.
 13 Q So for each district, as you are Treasurer
 14 within the pooled funds, each district had and
 15 continues to have a precise account balance, correct?
 16 A That precise account balance, in hindsight,
 17 it is precise.
 18 Q Okay.
 19 A I would not be preparing today each
 20 district's account balance, so yes.
 21 Q Now, page 38, please, first full paragraph
 22 beginning with "not all". Do you see where it says:
 23 Not all investment income is allocated quarterly to
 24 the district's "best practices", requires the TTO to

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1 hold a balance of unallocated income to account for
 2 market fluctuations and errors and allocation. Do you
 3 dispute this finding?
 4 A I do not.
 5 Q Okay. And then it says: These unallocated
 6 balances belong to the districts in amounts equal to
 7 their respective prorated shares but have not been
 8 formally credited to the districts on the TTO's books
 9 and records. Do you dispute that finding in any way?
 10 A I do not.
 11 Q All right, so that takes care for now,
 12 unless we have to go back to it, of the Order, and I
 13 would like to turn to Exhibit B of the Complaint. And
 14 for those following along on the Complaint itself,
 15 that begins on page 61 of the PDF.
 16 And Mr. Getty, would you be kind enough to tell
 17 me when you're there?
 18 A I am there.
 19 Q Okay. While you may not have seen it in
 20 this particular form, am I correct that you have seen
 21 this School Code Amendment, which is Public Act 100-
 22 0921.
 23 A Correct, I am familiar.
 24 Q Okay. And this is the law passed in 2018 by

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1 the General Assembly and signed by the Governor that
 2 allowed LT to withdraw from the TTO once the 2013
 3 lawsuit was done and over with, correct?
 4 A Correct.
 5 Q Okay. And you're aware, sir, that LT passed
 6 a Resolution on June 20 -- in late June, I believe,
 7 June 25 of 2021, withdrawing from the TTO under this
 8 statute, correct?
 9 A Again, I am also unsure of the date, but I
 10 know what you are speaking to, yes.
 11 Q Okay. And just so we're on the same page,
 12 does the TTO agree that LT lawfully withdrew from the
 13 TTO effective July 1, 2021?
 14 MR. KALTENBACH: Your Honor, again, Mr. Hoffman
 15 is asking for a legal opinion in how he phrased that.
 16 MR. HOFFMAN: Well, Your Honor, I think I am
 17 entitled to ask him that because he is -- as I
 18 understand it, he is the Treasurer to sign and charged
 19 with the responsibility of enacting this statute and
 20 doing what needs to be done upon LT's withdrawal. And
 21 I just want to know whether he's aware as the TTO's
 22 head full-time employee --
 23 THE COURT: Well, what about this, do you have
 24 any reason to think that the withdrawal by LT didn't

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1 follow the statute. Is that a fair question?
 2 MR. HOFFMAN: Yes, sure.
 3 MR. KALTENBACH: I am fine with that, Your Honor.
 4 THE COURT: All right, Mr. Getty, can you answer
 5 that question?
 6 MR. GETTY: I have no reason to believe that it
 7 was unlawful.
 8 BY MR. HOFFMAN:
 9 Q Okay. So as far as you know, the TTO was
 10 not contesting LT's action to withdraw from the TTO as
 11 of July 1, 2021, correct?
 12 A Correct.
 13 Q Okay. See, some of my questions are really
 14 easy. So let's take a look at page 3 of the Act,
 15 which is page 63 of the PDF document, which has the
 16 underlined section, a big, underlined paragraph,
 17 right? And it is fair to say this is the paragraph
 18 that talks about what happens if and when LT withdraws
 19 from the TTO, correct?
 20 A Correct.
 21 Q Okay. So it says here in -- it has a series
 22 of numbered paragraphs about what's supposed to
 23 happen. Do you see those, they are numbered? They
 24 are not numbered paragraphs, they are numbered

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1 sections or parts of sentences, but there is number
 2 one, number two, and number three in parentheses; do
 3 you see those?
 4 A I see those.
 5 Q Okay. So in number one says: The Trustees
 6 of schools in the Township, that's the TTO, right?
 7 A Correct.
 8 Q Okay. Shall no longer have or exercise any
 9 powers or duties with respect to the school district
 10 or with respect to the school business operations or
 11 assets of the school district; do you see that?
 12 A I see it.
 13 Q Okay. And that would be effective as of the
 14 withdrawal on July 2, 2021, correct?
 15 A Correct.
 16 Q Okay. So question is, and if I kind of
 17 shortened that up a little bit, it says in part the
 18 TTO shall no longer have or exercise any powers or
 19 duties with respect to the assets of the school
 20 district, right? I've read part of that sentence.
 21 Yes, do you see that?
 22 A Yes.
 23 Q Okay. So why did the TTO hold onto the
 24 assets of LT, in part, after July 1, 2021?

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1 A Well, on July 1, we don't have bank
 2 statements, we don't have a lot of the information
 3 that helps reconcile all of the books and records and
 4 the general ledger to get to that precise amount of
 5 what a school district would -- their position of the
 6 total pooled investments.
 7 So, you know, it is something, like I said
 8 before, in hindsight, it is precise. In the moment,
 9 you do not know.
 10 Q Okay. And how long does it take for bank
 11 statements to roll in?
 12 A It differs. Obviously, with the total
 13 pooled investments, those can take about 10 days. And
 14 then we have others, if it has to do with bank
 15 statements that -- account analysis statements, you
 16 know, sometimes those can take anywhere from 30 to 45
 17 days for the analysis statements.
 18 Q But the -- you have already told me earlier
 19 that the TTO maintains a precise balance for each
 20 school district, as the Judge found, right?
 21 A Hindsight.
 22 Q You are freezing up.
 23 MR. KALTENBACH: Yeah, he is frozen on mine as
 24 well. I think he's back now.

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1 BY MR. HOFFMAN:
 2 Q Okay, paragraph number 2 says: That all
 3 books and records of the Trustees of Schools, and then
 4 it says all money, securities, loanable funds and
 5 other assets relating to the school business and
 6 affairs of the school districts shall be transferred
 7 and delivered to the School Board allowing for a
 8 reasonable period of time not to exceed 90 days to
 9 liquidate any pooled investments. Do you see that?
 10 A I see that.
 11 Q Isn't what this is saying here is that if
 12 there are investments that have to be liquidated from
 13 the investment pool in order to pay LT, you have 90
 14 days to liquidate those investments. But if the
 15 investments are liquid, they need to be provided to
 16 LT.
 17 A No, I disagree. I think it is 90 days to
 18 liquidate from the Treasurer's office pooled
 19 investments.
 20 Q It says 90 days to liquidate any pool
 21 investments, correct?
 22 A Correct, which would include the Treasurer's
 23 office pool.
 24 Q Okay. The \$6 million dollars that you put

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1 into the two bank accounts that are at issue here,
 2 well actually, you know what, we will get to that. I
 3 am going to lay a better foundation that. We will
 4 look at your transmittal letter and we will talk about
 5 that then.
 6 And then number three, it just says that all, you
 7 know, buildings and real property, that all gets
 8 transferred, LT, effective upon their withdrawal,
 9 correct? I am paraphrasing.
 10 A Yes.
 11 Q Okay. All right. So what was your
 12 understanding of what you were supposed to do with
 13 respect to LT's money under part two of this
 14 provision?
 15 A That investments would have to be converted
 16 to cash, and also the 204 position within the
 17 Treasurer's office pooled portfolio would have to be
 18 determined along with the other twelve member
 19 districts because they all own a percentage of the
 20 total pool that's held in the Treasurer's office.
 21 So not only is 204's position need to be
 22 reconciled, but all of our member districts need to be
 23 reconciled.
 24 Q Where does it say that in paragraph 2?

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1 A Well, that's 90 days to liquidate the pooled
 2 investments.
 3 Q So in your mind, 90 days to liquidate any
 4 pulled investments gets into a whole big analysis
 5 involving all the other districts, and what
 6 percentages people own, and in what investments,
 7 correct? People, meaning the districts?
 8 A Correct. And typically --
 9 Q And you will agree -- you will agree with me
 10 that that position is not expressly stated in this
 11 statute? This is something you're inferring from the
 12 statute, correct?
 13 A Correct. It's also what we do
 14 (indiscernible) receive a district audit
 15 communication, and in that district audit
 16 communication, it provides a percentage of their
 17 ownership of the total pooled investments for the
 18 Treasurer's office. And so every year we provide that
 19 to the member districts and that correlates to the
 20 cash balance of the agency fund.
 21 MR. HOFFMAN: move to strike the answer after the
 22 word correct as non-responsive and a narrative answer.
 23 THE COURT: Well, on my screen at least part of
 24 the answer was cut off. So let's strike the whole

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1 answer because I did not hear all of it, and let's ask
 2 Mr. Hoffman to re-ask the question, and Mr. Getty,
 3 you'll be able to respond, okay, to the question
 4 that's being asked.
 5 BY MR. HOFFMAN:
 6 Q The specific question, sir, is you will
 7 agree with me that your explanation of how the
 8 percentage ownership of LT and the other districts
 9 needs to be evaluated and examined in the context of
 10 providing money to LT. None of that is expressly
 11 stated in this statute, that's something you're
 12 inferring from this phrase: 90 days to liquidate any
 13 pooled investments, correct?
 14 A Yes.
 15 Q Okay. Thank you. Now, I am going to show
 16 you, sir, -- and I am going to use the screen share
 17 function, Your Honor. And I am going to pull up a
 18 document marked in evidence at the trial, which is the
 19 TTO's audit statement for the year ending June 30,
 20 2020, as this Court, I think, has gathered off the
 21 fiscal year for the TTO, as well as the school
 22 districts, ends at the end of June, you know, similar
 23 to when their school year ends.
 24 So they're not operating on a calendar basis.

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1 This is a document that was admitted into evidence,
 2 also a document that is available on TTO's website.
 3 THE COURT: Is this in your group of exhibits,
 4 Mr. Hoffman?
 5 MR. HOFFMAN: It is not and that's why I am using
 6 the screen share function.
 7 THE COURT: Okay.
 8 BY MR. HOFFMAN:
 9 Q So I have pulled up page 14 of this report,
 10 which is actually page 18 of the PDF document.
 11 And Mr. Getty, do you recall this? Well, you are
 12 the Treasurer, obviously, you're familiar with the
 13 audit of the TTO, yes?
 14 A Correct.
 15 Q Okay. And you are familiar with this
 16 particular fund, which is the audited report or
 17 statement for the pooled investment account that's
 18 called the agency fund, right?
 19 A Correct.
 20 Q Okay. And so as of June 30 --
 21 THE COURT: Excuse me. Is the agency fund what
 22 you talked about earlier, the -- you had a name for
 23 it, Mr. Hoffman?
 24 MR. HOFFMAN: Yeah, the agency fund is the pooled

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1 investment. This is the investment pool.
 2 THE COURT: Is this the, like, kind of side or
 3 what did you call it? hold on, let me look at my
 4 notes. Oh, the rainy day fund. Is that the same
 5 thing?
 6 MR. HOFFMAN: Okay. So, Your Honor, if you look
 7 at the liability section and you see: Due to Township
 8 districts, all of the districts within the TTO are
 9 listed, and the very last line before the dark line
 10 there it says: Undistributed investment activity, see
 11 Note C.
 12 THE COURT: Got it, okay, all right.
 13 MR. HOFFMAN: That's the unallocated amount.
 14 It's there are obviously certain complications
 15 involving it, but this is -- that's the line item, the
 16 \$7 million dollar amount that I was talking about.
 17 THE COURT: Got it, okay, thank you.
 18 MR. HOFFMAN: All right.
 19 BY MR. HOFFMAN:
 20 Q Okay, Mr. Getty, you're familiar with this
 21 statement, correct?
 22 A Correct.
 23 Q And so at the time, June 30, 2020, the
 24 pooled investment fund or agency fund had just about

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1 \$222 million dollars in it, correct?
 2 A It would not have that amount of cash in it,
 3 no.
 4 Q It had a value of \$222 million dollars,
 5 approximately, yes?
 6 A I would say approximately that \$3.5, that
 7 asset, that would be a due to/due from. I wouldn't
 8 incorporate that value because that was the -- that
 9 \$3.578 -- 878, that amount was you know being
 10 litigated. That involves money that was not received
 11 from District 204, in the past. And so, technically,
 12 that's an asset on the books, but we believe it more
 13 to be a liability. And then the --
 14 Q No, this is money -- let's talk about that
 15 advances to Township School Treasurer, as long as you
 16 brought it up. I wasn't going to ask questions about
 17 it, but now I will. This was an amount of money that
 18 essentially the Treasurer loaned to its office from
 19 school district funds, correct?
 20 A No.
 21 Q (Indiscernible), yes?
 22 A No, it was not.
 23 Q You are claiming that this is a shortfall
 24 because LT owed the TTO money for various claims it

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1 brought in the last lawsuit, right?
 2 A Related to pro rata.
 3 Q Right, the pro rata expense claim.
 4 A Correct.
 5 Q And on the pro rata expense claim during the
 6 Healy era, that was tied up in a dispute as to whether
 7 there was an agreement by the TTO to fund certain
 8 business expenses that LT incurred, correct?
 9 A Correct.
 10 Q And on that issue, which is a multimillion
 11 dollar issue, the TTO lost, and LT won? Yes?
 12 A (Nonresponsive).
 13 Q I am not trying to gloat about it. I am
 14 just saying, that's what happened, yes?
 15 A I would say the other school districts lost
 16 and LT won, correct.
 17 Q The TTO recovered zero on its pro rata
 18 expense claim for the Healy era, correct?
 19 A Correct.
 20 Q Okay. So let me ask you this, in light of
 21 that loss, what has the TTO done with the advances to
 22 Township School Treasurer line item?
 23 MR. KALTENBACH: Your Honor, I would object.
 24 This as well beyond the scope of any allegation made

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1 in the Complaint or any argument made in the
 2 preliminary injunction.
 3 THE COURT: All right, I was curious to know, Mr.
 4 Hoffman, how this fits into the injunction hearing?
 5 MR. HOFFMAN: Well, I don't know how it fits in.
 6 The witness brought it up.
 7 THE COURT: All right, but that doesn't mean you
 8 have to follow that trail, right?
 9 MR. HOFFMAN: Okay. We will come back to that in
 10 his deposition. That's fine.
 11 BY MR. HOFFMAN:
 12 Q So let's go to the liability section, sir.
 13 Each of the districts has a specific balance for their
 14 agency account here, correct?
 15 A Correct.
 16 Q And the \$7,005,702 is not allocated to any
 17 particular school district, correct?
 18 A Correct. That is unrealized gains.
 19 Q Right. And does this, in whole or in part,
 20 reflect the investment income that the TTO receives
 21 but does not allocate in full to all districts as
 22 Judge Esrig found?
 23 A For this year, I would say \$100,000,
 24 roughly; approximately \$100,000 of that \$7 million

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1 would have been investment income that was not
 2 allocated.
 3 Q I didn't restrict it to this year, sir.
 4 Answer the question. (Indiscernible).
 5 A (Indiscernible) to the number in front of
 6 us.
 7 Q Now, answer the question without -- so
 8 you're saying that the \$7,005,702 figure, what is it
 9 as of June 30, 2021?
 10 A Our audit is not done, but I believe it will
 11 be lower in value than this. That is a market value
 12 of the securities (indiscernible)
 13 Q About how much? Ballpark me, please?
 14 A I saw a rough draft, briefly, and I believe
 15 that number was around 5. But again, this hasn't been
 16 through technical review, so --
 17 Q I am not going to hold you to a specific
 18 number, sir. I just want your cooperation with that
 19 estimate. So is any part of that amount unallocated
 20 investment earnings that are due to the districts, but
 21 have not yet been allocated?
 22 MR. KALTENBACH: Well, Your Honor, I object. I
 23 think Mr. Getty just answered it and Mr. Hoffman took
 24 objection with the answer. So if he's talking about

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1 any part of that \$7 million, Mr. Getty just answered
 2 that.
 3 MR. HOFFMAN: The \$5 million. No, I didn't get
 4 an answer to that.
 5 THE COURT: All right, yes, I will overrule the
 6 objection. Go ahead, Mr. Getty.
 7 MR. GETTY: It's \$80,000 of undistributed
 8 investment (indiscernible) 2021.
 9 BY MR. HOFFMAN:
 10 Q But that's 2021, I want to know about prior
 11 years because in each of the prior years as the Judge
 12 found, the TTO did not distribute the investment
 13 earnings in full. So don't restrict your answer to
 14 2021, please.
 15 MR. KALTENBACH: Your Honor, I am going to
 16 object, relevance. I am also going to object to Mr.
 17 Hoffman characterizing things in question that as the
 18 Judge found. I don't think that is proper. It
 19 assumes that that's what the Judge found. The Judge
 20 found what he found.
 21 THE COURT: All right, rephrase the question, Mr.
 22 Hoffman. Mr. Getty, pay attention and answer the
 23 question that's being asked.
 24 BY MR. HOFFMAN:

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1 Q My question is, I am not restricting my
 2 question to investment. The TTO did not pay the
 3 district's a hundred percent of their investment
 4 earnings for the entire time you were Treasurer, and
 5 at least some of the time that Susan Berkheimer was
 6 the Treasurer before you, correct?
 7 A Correct. There is always a small
 8 unallocated number.
 9 Q Right. And so that unallocated number
 10 existed in 2021, 2020, 2019, 2018, and going back,
 11 correct?
 12 A Each year, but it doesn't build on itself
 13 (indiscernible) why you are insinuating.
 14 Q My question, I'm not insinuating anything.
 15 My question is, you said you expect on an approximate
 16 basis, the undistributed investment activity for 2021
 17 to be about \$5 million dollars.
 18 And I asked you a question as to what portion of
 19 that money is unallocated investment income that
 20 belongs to the districts? And the answer I got had to
 21 do just with 2021, so I want to clarify I'm not
 22 restricting it to 2021.
 23 I'm asking you what portion of the \$5 million
 24 dollar undistributed investment activity,

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1 approximately, for 2021 is money that belongs to the
 2 districts, but has not yet been allocated to them?
 3 MR. KALTENBACH: And I will, again, Your Honor, I
 4 will object, it has been asked and answered. This
 5 will be, I think --
 6 THE COURT: It hasn't been answered. Overruled.
 7 Go ahead, Mr. Getty.
 8 MR. GETTY: No, that is the \$80,000 number that
 9 I said it earlier.
 10 BY MR. HOFFMAN:
 11 Q So what does the \$4,920,000 approximate
 12 difference represent?
 13 A The market value of the securities held in
 14 the Treasurer's office pool on June 30th, 2021. And
 15 this case, that's \$7 million dollars, I would say 99
 16 percent of it is the market value of the securities
 17 held on June 30th, 2020.
 18 Q So my question is, what happened to the
 19 money that year, after year, after year, the TTO was
 20 putting in this rainy day fund? What happened to it
 21 and why hasn't LT been paid for its share of those
 22 funds for all of those years?
 23 MR. KALTENBACH: Your Honor, first of all I will
 24 object. I don't think this is part of the Complaint.

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1 Second, Mr. Getty never -- there's no testimony from
 2 the witness or anyone other than Mr. Hoffman that this
 3 was called (indiscernible) by anyone other than Mr.
 4 Hoffman.
 5 THE COURT: That it was what? You cut out. That
 6 it was what? Mr. Kaltenbach?
 7 MR. KALTENBACH: I'm sorry, am I still --
 8 THE COURT: You're on, go ahead.
 9 MR. KALTENBACH: Okay. Your Honor, first of all,
 10 I believe it goes well beyond the allegations in the
 11 Complaint and the preliminary injunction hearing. But
 12 second of all, there has been no testimony by this
 13 witness. The only one who's called it the rainy day
 14 fund is Mr. Hoffman. I am objecting to Mr. Hoffman,
 15 you know, using that term in his questioning. I think
 16 it's an improper question. It's assuming testimony
 17 that's never been made by other than Mr. Hoffman.
 18 THE COURT: Did you use the word "rainy day fund"
 19 in your question, Mr. Hoffman?
 20 MR. HOFFMAN: I did. I think it's an
 21 exceptionally petty objection because --
 22 THE COURT: All right, all right.
 23 MR. HOFFMAN: Look, it is something. You have to
 24 refer to it as something. And the Court, we already

<p style="text-align: right;">Page 174</p> <p>1 went through the Court on Page 38, talked about best 2 practices, requires the TTO to hold the balance of 3 unallocated income to account for market fluctuations 4 and errors in allocation. 5 THE COURT: Well, let's call it unallocated 6 income, okay? 7 MR. HOFFMAN: Right. 8 THE COURT: So let's look at a term of ARC, we 9 can call it undistributed or unallocated income, does 10 everybody understand what that word means? 11 MR. KALTENBACH: Your Honor, may I suggest that 12 we just call it what it is called on the financial 13 statement? 14 THE COURT: Yeah, undistributed investment 15 activity, I don't know, is that a fair? 16 MR. HOFFMAN: Your Honor, that's -- there's a 17 problem with that, which is the problem with that is 18 it used to be called on his financial statement 19 unallocated investment income. They changed it. 20 There's a reason for it. It's complicated, I'm not 21 going to get into all that. But the point is the 22 Judge made a specific finding that this witness didn't 23 dispute, that there was unallocated income year-to- 24 year-to-year, and my question to Mr. Getty is --</p>	<p style="text-align: right;">Page 176</p> <p>1 statements, I asked you what it represents. 2 A The other money that the other -- 3 Q Okay, what if there's other -- 4 A (Indiscernible). 5 Q What does the other money mean? What is it? 6 A That is the market value of the securities 7 at the end of the closing bell on 6/30. And that is 8 reported each year. Some years, it is a negative 9 amount. Other years it's a positive amount. And so 10 that always fluctuates. 11 If you were to take the ending bell on 7/1, that 12 number would change. So it's the market fluctuations 13 in the values of the securities held. 14 Q Okay. All right, sir, I appreciate that. 15 And so going back to our -- I'm sorry, going back to 16 where we were on our chart. So for Lyons Township 17 High School, as of June 30, 2020, the amount of money 18 that LT had as of that time was \$43.547,899, correct? 19 A Correct. 20 Q Okay. And that's not a percentage of 21 anything, that's a precise amount of money, right? 22 A Correct. 23 Q Okay. Now, if you were to take money from 24 LT's fund balance, this \$43 million figure, right, and</p>
<p style="text-align: right;">Page 175</p> <p>1 THE COURT: Well, hold on, hold on, let's all get 2 on the same page. We are going to call it from now 3 on, as a term of ARC unallocated income. Is that fair? 4 MR. HOFFMAN: Yes. 5 THE COURT: Does everybody, including you, Mr. 6 Getty, understand what I mean when I say unallocated 7 income? that's a specific term that we're going to use 8 with regard to this particular pool of money, okay? 9 MR. GETTY: I do. 10 THE COURT: Go ahead and ask you question, Mr. 11 Hoffman. 12 BY MR. HOFFMAN: 13 Q So the question is, what happened to the 14 year-to-year-to-year unallocated income? How much is 15 it, and how much is LT's share as of July 1, 2020? 16 And if you can only approximate, please do so. 17 A It's \$80,000, approximately \$80,000. 18 Q LT's share or total? 19 A No, total. 20 Q So tell me what the remaining amount of that 21 \$5 million dollar figure you talked about represents? 22 A So again, it's our audit statements. So 23 this -- 24 Q I didn't ask you if it was on your audit</p>	<p style="text-align: right;">Page 177</p> <p>1 you were to transfer that money to the agency account 2 of District 109, which is that \$37 million dollar 3 figure right above it, do you see that? 4 A Okay. 5 Q Okay. So if you took a million dollars off 6 of this \$43 million and you put it -- that LT has, and 7 you put it in District 109's account, instead of \$38 8 million, they'd have about \$39 million; do you see 9 that? 10 A I see that. 11 Q Okay. If you made journal entries 12 reflecting that million dollar transfer, the million 13 dollars would then become District 109's money, 14 wouldn't it? 15 MR. KALTENBACH: I'm going to object to the 16 extent it's asking for the witness to make a legal 17 conclusion. 18 THE COURT: Yeah, I'm going to sustain the 19 objection. 20 MR. HOFFMAN: Okay. 21 BY MR. HOFFMAN: 22 Q Sir, if you transferred a million dollars from 23 LT's agency account fund balance, which as of this 24 time was about \$43 million, and you put that million</p>

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1 dollars and in District 109's account. So instead of
 2 \$38, it was about \$39 million. Who as the Treasurer,
 3 would you say, would be the owner of that million
 4 dollars following the transfer?
 5 MR. KALTENBACH: Your Honor --
 6 MR. HOFFMAN: Excuse me.
 7 BY MR. HOFFMAN:
 8 Q In your practice and operation as the
 9 Treasurer?
 10 MR. KALTENBACH: I'm going to make the same
 11 objection, Your Honor. I think it's asking the
 12 witness to make a legal conclusion.
 13 THE COURT: Yeah, I kind of do too. I mean,
 14 you're at, you know, who is the owner? I mean, that
 15 is it's a legal conclusion, right? So I'm going to
 16 sustain the objection.
 17 BY MR. HOFFMAN:
 18 Q Could you -- this \$43 million dollar figure
 19 for District 204, that's the fund balance that their
 20 agency account has of this date, correct?
 21 A It's close to the fund balance. It is
 22 actually their cash balance, and there's a slight
 23 difference there. And so -- but I don't want to say
 24 that that is the fund balance because that would be

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1 incorrect.
 2 Q What's the difference?
 3 A First is if there's liability. And there's
 4 bank accounts on the general ledger that are not held
 5 in the Treasurer's office pool. You take those two,
 6 you would add the liabilities, and you would subtract
 7 any cash not held by the Treasurer's office. And when
 8 you do that, you get the cash balance, which we have
 9 here.
 10 Q Okay. So this is -- and so is this inclusive
 11 of funds not held by the TTO or exclusive of it?
 12 A It's exclusive of the funds held at the
 13 Treasurer's office.
 14 Q Okay, so look, fair enough. So just to
 15 clarify, this is the \$43 million dollar figure for LT.
 16 Is the fund balance for LT's agency accounts held at
 17 the TTO without including any other assets LT has
 18 elsewhere?
 19 A Correct.
 20 Q Okay. As you understand your authority as
 21 the Treasurer of the TTO, are you authorized to remove
 22 any of the funds of LT listed here without LT's
 23 permission?
 24 A Listed here, no.

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1 Q Are there any funds of LT held at the TTO
 2 that you believe you have the authority to remove from
 3 LT's account without LT's permission or direction?
 4 A If there was a mistake made to their general
 5 ledger, I believe I have an obligation to correct it.
 6 Q And is that what you're doing with the
 7 investment account analysis, correcting mistakes, and
 8 is that where your power comes from?
 9 A I do believe that there were mistakes made
 10 as it relates to investment allocation, yes.
 11 Q That was a "yes" is the answer to my
 12 question?
 13 A Yes.
 14 Q So you're just correcting a \$1.2 million
 15 dollar mistake. You're not -- that's all you're
 16 doing, right, with LT's money or want to do with LT's
 17 money?
 18 A All I want is the districts to have their
 19 fair share of the interest allocation.
 20 A That didn't answer my question. Would you
 21 answer my question, sir? So what you what you're
 22 doing, in your mind, is correcting a mistake by taking
 23 back \$1.2-plus million dollars from LT's account to
 24 correct an error that that goes back to 1995, right?

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1 A Yes.
 2 Q And that's your statutory authority,
 3 correcting errors in this in this context?
 4 A Yes.
 5 Q And what section of the School Code gives
 6 you the authority to correct multi-million dollar
 7 errors --
 8 MR. KALTENBACH: Your Honor -- I apologize. I am
 9 going to object to that. Again, I think he is asking
 10 Mr. Getty to cite (indiscernible).
 11 MR. HOFFMAN: No, I'm asking him --
 12 THE COURT: Yeah, he ask him what his authority
 13 was. The objection is overruled. Go ahead.
 14 MR. HOFFMAN: Thank you.
 15 BY MR. HOFFMAN:
 16 Q What provision in the School Code authorizes
 17 you to correct multimillion dollar errors in the
 18 agency accounts of school districts?
 19 A I mean, there's mistakes as part of being in
 20 charge in the books and records, we've corrected
 21 million-dollar mistakes before.
 22 Q Is that Section 8-7 of the School Code
 23 you're referring to, to your knowledge?
 24 A Is that the full provision? I don't know

<p style="text-align: right;">Page 182</p> <p>1 the School Code numbering that well.</p> <p>2 Q Okay, if you don't know, you don't know.</p> <p>3 That's fine. All right. I've got a few more things</p> <p>4 to run through with this witness. Do we want to keep</p> <p>5 going or take a break?</p> <p>6 THE COURT: I'd like to finish this witness, at</p> <p>7 least your examination of him. Again, you know, we're</p> <p>8 trying to keep on (indiscernible) irreparable harm, no</p> <p>9 adequate remedy at law. In your mind, have you</p> <p>10 addressed those issues? Do intend to address those</p> <p>11 issues with this witness?</p> <p>12 MR. HOFFMAN: Well, Your Honor, I think we have.</p> <p>13 THE COURT: Okay.</p> <p>14 BY MR. HOFFMAN:</p> <p>15 Q Now let me move on to my next set of</p> <p>16 questions. Let's take a look at the Resolution, sir,</p> <p>17 and that is -- I will just pull it up on screen, we</p> <p>18 will make this all easier.</p> <p>19 THE COURT: Is that one of your exhibits?</p> <p>20 MR. HOFFMAN: It is.</p> <p>21 THE COURT: It is Exhibit N, yes, okay.</p> <p>22 MR. HOFFMAN: I will just pull it up, though.</p> <p>23 THE COURT: Okay.</p> <p>24 BY MR. HOFFMAN:</p>	<p style="text-align: right;">Page 184</p> <p>1 the Trustees request, right?</p> <p>2 A Correct.</p> <p>3 Q Okay. And so what you determined is that LT</p> <p>4 was -- going back to 1995, LT was over-allocated \$1,</p> <p>5 263,220.09, for the period 1995 through 2020, correct?</p> <p>6 A Correct.</p> <p>7 Q And all but \$275 dollars of that amount</p> <p>8 related to the time period 1995 through 2012, correct?</p> <p>9 A I believe so.</p> <p>10 Q Okay. So there is also smaller amounts</p> <p>11 listed for other districts on page 2 in the middle.</p> <p>12 They've got District 104, 105, and 106.5 and 106.7</p> <p>13 having other amounts that you say were over-allocated</p> <p>14 to it, correct?</p> <p>15 A Correct.</p> <p>16 Q And so the paragraph 3 on page 3 talks about</p> <p>17 reallocating those amounts to districts 101, 102, 103,</p> <p>18 106, 107, 108, 109, 204.5, and 217, correct?</p> <p>19 A Correct.</p> <p>20 Q And so on paper, anyway, the TTO went ahead</p> <p>21 and transferred the \$1.2 million in LT assets to these</p> <p>22 other districts, along with the other funds we looked</p> <p>23 at on page 2, right?</p> <p>24 A On paper, correct.</p>
<p style="text-align: right;">Page 183</p> <p>1 Q All right. Here's the Resolution that was</p> <p>2 passed September 23rd; do you recognize it?</p> <p>3 A I do.</p> <p>4 Q This is Exhibit N. And perhaps this would</p> <p>5 be a good time to -- I mean, I can ask for this to be</p> <p>6 admitted in evidence, Your Honor. Is there any</p> <p>7 objection?</p> <p>8 THE COURT: Mr. Kaltenbach?</p> <p>9 MR. KALTENBACH: I'm sorry, Your Honor, I missed</p> <p>10 that. My apologies.</p> <p>11 THE COURT: He wants to know if there's any</p> <p>12 objection to the admission of the Resolution into</p> <p>13 evidence?</p> <p>14 MR. KALTENBACH: No, Your Honor.</p> <p>15 THE COURT: Okay, it will be admitted. Do you</p> <p>16 want to call that Plaintiff's Exhibit 1?</p> <p>17 MR. HOFFMAN: We will just keep calling it LT</p> <p>18 Exhibit N.</p> <p>19 (WHEREUPON, said document</p> <p>20 was marked as LT Exhibit N</p> <p>21 for Identification.)</p> <p>22 BY MR. HOFFMAN:</p> <p>23 Q Okay, so this is the Resolution we talked</p> <p>24 about earlier that's based on the analysis you did of</p>	<p style="text-align: right;">Page 185</p> <p>1 Q Right. And so what you couldn't do because</p> <p>2 of the Court's Order of September 23rd was actually</p> <p>3 take the money from the bank accounts that correspond</p> <p>4 to these numbers, right?</p> <p>5 A Correct.</p> <p>6 Q Okay. So then the -- so let's just take a</p> <p>7 look at District 217. And we've got an amount of</p> <p>8 \$246,509.62; do you see that?</p> <p>9 A I see it.</p> <p>10 Q That was added to the balance of District</p> <p>11 217's agency account at the TTO, correct, on the</p> <p>12 general ledger?</p> <p>13 A No, on the general ledger, that has not been</p> <p>14 reflected on 217.</p> <p>15 Q Okay. And why have you not made those</p> <p>16 changes to the general ledger yet?</p> <p>17 A We are here today.</p> <p>18 Q Okay. So you held off on transferring the</p> <p>19 funds discussed in paragraph 3 pending further</p> <p>20 direction arising out of this lawsuit, right?</p> <p>21 A Correct.</p> <p>22 Q Okay. Now were you to transfer the \$246,000</p> <p>23 dollar figure to District 217, that would become</p> <p>24 District 217's money, right?</p>

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1 MR. KALTENBACH: Again, I will object to the
 2 extent that he is asking for a legal.
 3 MR. HOFFMAN: Your Honor, I can't believe this
 4 objection I'm hearing. The question is whether --
 5 THE COURT: I guess you would say, would you
 6 consider it to be 271's?
 7 BY MR. HOFFMAN:
 8 Q Would that be some -- once you transfer this
 9 \$246,000 dollar amount to District 217, if you do.
 10 Would you consider that to then be District 217's
 11 money?
 12 A So this -- no money is transferred when it
 13 comes to quarterly interests. It's allocated to the
 14 general ledger. So because all the money is in the
 15 agency fund, it never leaves the agency fund. It's
 16 simply a general ledger journal entry crediting the
 17 money. So crediting the -- crediting the money on
 18 their general ledger, I just want to --
 19 Q Mr. Getty, District 217's account balance
 20 would increase by \$246,509.62, yes?
 21 A Correct.
 22 Q And the account balance, as Judge Esrig
 23 explained, as you agreed, states the amount of money
 24 that each district has held at the TTO. Yes?

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1 A Say that again.
 2 Q The account balance for each district's
 3 agency account held at the TTO is money of the school
 4 district and it's up to the school district to spend
 5 that money, not the Treasurer or the TTO, right?
 6 Right?
 7 A Yes, I would agree that goes to the account
 8 balance, yes.
 9 Q So once -- if District 217 gets the
 10 \$246,509.62 added to its account balance of the TTO,
 11 District 217 will have to give its permission for that
 12 money, just like the rest of its account balance, to
 13 be spent. Yes?
 14 A When it's converted to cash, yes.
 15 Q I didn't ask whether it was converted in
 16 cash.
 17 A Well, when you said spent, again goes to the
 18 (indiscernible).
 19 Q Well, you can write a check -- I am not
 20 suggesting that they -- I have a suitcase full of cash
 21 that they give to their vendors, but when District 217
 22 authorizes the Treasurer to issue a check to one of
 23 its vendors, that money comes from its account
 24 balance, right?

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1 A Correct.
 2 Q So once the \$246,000 is added to District
 3 217's account balance, only District 217 will be able
 4 to authorize the expenditure of those funds, right?
 5 A Correct.
 6 Q Now, let's take a look at the motion that
 7 the TTO filed yesterday afternoon. I'm going to pull
 8 that up so we can just look it.
 9 THE COURT: All right, so I haven't seen this
 10 yet, as I told you earlier.
 11 MR. HOFFMAN: Correct. I'm not going to ask a
 12 lot of questions about it. I'm just going to focus on
 13 one part of it.
 14 MR. KALTENBACH: I thought we said we weren't
 15 going to take this up today.
 16 MR. HOFFMAN: Let me explain the only reason that
 17 I am going to use this for. The reason I'm going to
 18 use this document is to ask this -- what this document
 19 says, in part, is that our case should be dismissed
 20 because we failed to sue all of the other districts.
 21 That they were necessary parties to this case.
 22 And my question to this witness is, is he aware?
 23 Is this, in his understanding, is the TTO taking this
 24 position because in order for LT to get its money

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1 back, if the \$1.2 million dollars was taken for our
 2 account wrongly, and we had to get that money back, we
 3 would have to sue all of the other districts and not
 4 just the TTO to get that back. That's a statement, by
 5 the way, that's made in the TTO's response to limit or
 6 injunction.
 7 THE COURT: No, I get it. It goes to whether
 8 there's an adequate remedy at law, I get it.
 9 MR. KALTENBACH: Your Honor --
 10 MR. HOFFMAN: Exactly. And so they said in their
 11 response to the preliminary injunction motion that we
 12 could simply sue the TTO and all the other districts.
 13 And I think that's an acknowledgment that if they
 14 were to follow through on this Resolution and
 15 implement it, it's their position we'd have to sue all
 16 the other districts to get our money back.
 17 MR. KALTENBACH: Your Honor, as the motion
 18 argues, our motion is that based on their theory and
 19 their allegations, they have to sue all the other
 20 districts. That's what the motion argues.
 21 MR. HOFFMAN: If that \$1.2 million dollars is
 22 wrong and if it's -- if they shouldn't deduct it from
 23 our account, apparently, they haven't yet. But if
 24 they do that, and that's the whole point of what we're

<p style="text-align: right;">Page 190</p> <p>1 here for today, they do that, the effect is we have to 2 sue all of these other districts, or at least the 3 eight districts that are listed as getting our money. 4 THE COURT: All right. Those are legal arguments, 5 you can ask this witness what he knows about, you 6 know, how under a circumstance that you're describing 7 how they would repay money that was, you know, 8 allegedly wrongly taken, right? So ask him how they 9 would repay that. So let's forget about the motion to 10 dismiss for now. Go ahead and ask them the questions 11 about that. 12 BY MR. HOFFMAN: 13 Q So, Mr. Getty, assuming that you implemented 14 the Resolution, and you made debits and credits to the 15 individual districts' agency accounts, as laid out in 16 the Resolution. Isn't it true that is the TTO's -- 17 that is your position, belief and understanding that 18 for you to reverse those transactions, the other 19 districts would have to either give their permission 20 to the money being paid back or be ordered by a court 21 to pay it back, and that the TTO wouldn't have the 22 power to reverse those transactions on its own? 23 A Can you repeat that? 24 MR. HOFFMAN: Sure, Patrick?</p>	<p style="text-align: right;">Page 192</p> <p>1 before this, you know, on your question. I do not 2 understand it. I do not. 3 Q Let me ask you the question in a different 4 way then, sir. Hopefully, I can overcome. 5 If you implemented the Resolution, you would 6 reduce LT's fund balance by about \$2 million dollars 7 or \$1.2 million dollars. And you would reduce a 8 couple other districts in certain amounts, and then 9 you would increase the fund balance of a number of 10 other districts, correspondingly, right? 11 A Correct. Those numbers that were all laid. 12 Q And once the money goes to the accounts of 13 the other districts who benefitted, who got increases, 14 that money added to their accounts would become the 15 district's money to do it as they see fit in their 16 discretion, yes? 17 A Correct. 18 Q And would you have the power to just simply 19 take that money back? Or would the districts who got 20 that money, and those credits, have to be involved in 21 the process in some way? 22 A I guess I do not know the answer to that. 23 Q Okay. I appreciate your candor, sir, thank 24 you. Is there an objection to LT Exhibit M, as in</p>
<p style="text-align: right;">Page 191</p> <p>1 (WHEREUPON, the record was 2 read as requested.) 3 BY THE WITNESS: 4 A That we don't have the power to reverse 5 them, is that what you're asking for? 6 Q I think you just heard the question again, 7 is there something you don't understand about it, sir? 8 MR. KALTENBACH: Your Honor, I will object. 9 That's argumentative. 10 MR. HOFFMAN: No, I really want to know. 11 THE COURT: If can answer the question, he has to 12 answer the question. If he doesn't understand it, he 13 can ask for it to be rephrased. Do you understand the 14 question, Mr. Getty? 15 MR. GETTY: So it is a journal entry. If it was 16 a journal entry, can a journal entry be reversed? And 17 I guess the Treasurer's office could reverse a journal 18 entry, if ordered to do so. 19 Q You have what? 20 A That's what you were asking. 21 Q Well, I didn't ask you to guess about 22 anything. So could you answer my question without 23 guessing, please. 24 A Well, I guess I would seek legal counsel</p>	<p style="text-align: right;">Page 193</p> <p>1 Mary, the TTO Agenda for September 23, 2021? I don't 2 need to ask the witness questions about it, but I'd 3 like it to be part of the record. 4 THE COURT: Tell me, what's the exhibit? 5 MR. HOFFMAN: It's Exhibit M as in Mary. It is 6 the TTO Meeting Agenda for 9/23/2021. 7 THE COURT: Okay. Do you have any objection, Mr. 8 Kaltenbach? 9 MR. KALTENBACH: No, Your Honor, we do not. 10 THE COURT: All right. LT Exhibit M will be 11 admitted. Okay. 12 (WHEREUPON, said document 13 was marked as LT Exhibit M 14 for Identification.) 15 MR. HOFFMAN: And I've got the same question for 16 Exhibits I, is in Indigo, which is a Mr. Getty email 17 to the district's laying out information about his 18 analysis; J, as in Johnson, which is a spreadsheet for 19 the years 1995 through 2012 of the TTO that Mr. Getty 20 apparently prepared; and then K as a knight, which is 21 the corresponding spreadsheet for the 2013 to 2020 22 time period. They're all TTO documents, I don't think 23 there should be any problem admitting them. 24 THE COURT: Is that agreeable, Mr. Kaltenbach?</p>

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1 MR. KALTENBACH: It is, Your Honor. Thank you.
 2 (WHEREUPON, said document
 3 was marked as LT Exhibits I,
 4 J, and K for Identification.)
 5 THE COURT: All right. And I mean, are you
 6 admitting to foundation?
 7 MR. KALTENBACH: Well, there have been admitted
 8 into evidence, I mean, I guess -- well, I guess Mr.
 9 Hoffman didn't want to ask Mr. Getty what they are,
 10 let me put it that way. I don't know. I don't object
 11 to them coming in if it's an issue, he can ask Mr.
 12 Getty what they r.
 13 THE COURT: So I am going to say, I --
 14 MR. HOFFMAN: Well, let's just run through them
 15 really quickly because we don't want them to just hang
 16 out there. I won't spend a lot of time on them, I
 17 promise. I will just pull them up on share and it
 18 will go faster.
 19 BY MR. HOFFMAN:
 20 Q So Exhibit I, that's an email that you sent
 21 to all the districts regarding your investment income
 22 analysis, correct?
 23 A Correct.
 24 Q Okay. And I know that you had done other

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1 analysis in the past and you testified about those,
 2 but with respect to the numbers that are set forth on
 3 page 2 of this document, in this chart, am I correct
 4 that this is the first time that these specific
 5 numbers were given to the districts?
 6 A Correct.
 7 Q Okay. And exhibit -- so that one -- this
 8 covers the period 1995 through 2020, correct?
 9 A Correct.
 10 Q Okay. And then you have -- there's two
 11 additional spreadsheets that break it down into 1995
 12 through 2012, and then a spreadsheet for 2013 to 2020,
 13 correct?
 14 A Correct.
 15 Q Okay. And Exhibit J, that's the spreadsheet
 16 for the earlier time period, right?
 17 A Correct.
 18 Q And you prepared this?
 19 A I did.
 20 Q And this is where almost all of LT's amount
 21 appears, right?
 22 A Yes.
 23 Q Because if we look at Exhibit K, that's a
 24 spreadsheet you also prepared. That shows only \$275

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1 dollars in claimed over-allocations to LT during 2013
 2 and 2020, right?
 3 A Correct.
 4 Q And what was the time period at issue in the
 5 lawsuit prior to this one?
 6 A 1995 to 2012.
 7 Q Okay. I just want to run through a couple
 8 of more. Okay. Let's take a look at things that
 9 happened a little more recently, and we are going to
 10 look at Exhibit P. And on September 28th, you sent
 11 this email to Brian Waterman and Brian Stachacz at LT,
 12 correct?
 13 A And the Lyons Township High School Board of
 14 Education.
 15 Q Correct, thank you. And also Mr. Theissen
 16 and Ms. Christy Miller, yes?
 17 A Correct.
 18 Q Okay. And this is an email that you sent
 19 them on or about this date?
 20 A Yes.
 21 Q Any objection to admitting P, as in Peter?
 22 MR. KALTENBACH: No, Your Honor.
 23 (WHEREUPON, said document
 24 was marked as LT Exhibit P

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1 for Identification.)
 2 BY MR. HOFFMAN:
 3 Q All right. And so why did you send this
 4 email?
 5 A This was sent to District 204. At this
 6 point, we did not have a Court Order for today's
 7 hearing. And there was extreme concern that without a
 8 Court Order that the Treasurer's office would be in
 9 violation of the 90-day timeframe to send -- to fully
 10 liquidate the Lyons Township High School from the
 11 Lyon's Township Treasurer's office total pool of
 12 investments.
 13 Q Okay. So I am going to ask a couple more
 14 questions about it, but I think I'll just ask it in
 15 the context of the next exhibit. We're going to look
 16 at Exhibit Q. This is a response you got from Brian
 17 Waterman to your email that same day, correct?
 18 A Correct.
 19 Q Okay.
 20 MR. HOFFMAN: Any objection to admitting Q to in
 21 evidence, please.
 22 MR. KALTENBACH: No, Your Honor.
 23 MR. HOFFMAN: Okay.
 24 THE COURT: I will show Exhibit Q admitted.

<p style="text-align: right;">Page 198</p> <p>1 (WHEREUPON, said document 2 was marked as LT Exhibit Q 3 for Identification.) 4 BY MR. HOFFMAN: 5 Q Dr. Waterman had a series of questions and 6 concerns that he raised with you, right? 7 A Correct. 8 Q Okay. And in paragraph 1, he expressed to 9 you, it is important LT receives much of its funds as 10 possible and as soon as possible, they're happy to 11 accept the transfer into their own account, regardless 12 of the source you used. As long as you understand 13 that LT does not agree this is the correct amount 14 ultimately due us. LT does not have enough 15 information at this time to make that determination. 16 Do you see that? 17 A I do. 18 Q Okay. Do you do you think that LT at this 19 time, at the time Dr. Waterman wrote it, had enough 20 information to determine whether the \$.5 million 21 dollar figure was the amount ultimately due to LT? 22 MR. KALTENBACH: Well, Your Honor, I will to the 23 lack of foundation as to what does Mr. Getty think LT 24 -- I mean, well, I think it's (indiscernible)</p>	<p style="text-align: right;">Page 200</p> <p>1 Brian Waterman and others on September 28th following 2 the receipt of his email to you? 3 A Correct. 4 Q Okay. And it says in the middle: Given 5 that LTHS has chosen to file a lawsuit on issues you 6 outlined, we think the counsel need to be involved in 7 determining next steps and further discussions. What 8 did you mean by that? 9 A That was inserted with -- from advice of 10 counsel, so I took -- 11 Q Let me ask the question a different way. 12 Dr. Waterman had questions relating to financial 13 issues between the TTO and LT. Why did you not answer 14 those questions for him? 15 A We are in the middle of litigation. 16 Q Doesn't the TTO, regardless of what is going 17 on in litigation still have fiduciary duties to LT as 18 the holder of funds belonging to LT? 19 MR. KALTENBACH: And Your Honor, I am going to 20 object to that. It calls for Mr. Getty to make a 21 legal. 22 THE COURT: Yes, I will sustain it. 23 MR. HOFFMAN: Okay. 24 BY MR. HOFFMAN:</p>
<p style="text-align: right;">Page 199</p> <p>1 MR. HOFFMAN: I will withdraw the question. To 2 make it easier, I will withdraw the question. 3 BY MR. HOFFMAN: 4 Q Had you at this time provided LT with enough 5 information in your opinion to determine whether that 6 figure is correct in terms of the amount owed to LT? 7 A No, at this time, I don't think LT would 8 have enough information. 9 Q Okay. And then paragraph 2, Dr. Waterman 10 complains a little bit about the timing. In paragraph 11 3, well let me also just -- I am going to jump to one 12 exhibit and then I am going to jump back. Let's go -- 13 so there is a whole bunch of questions here and we are 14 going to get to them, but let's look at your response 15 to Dr. Waterman really quickly and then we will go 16 back. 17 This indicates the information on the wire 18 transfer, right? 19 THE COURT: I am sorry, where is that? 20 MR. HOFFMAN: I am sorry. I am now on Exhibit R, 21 as in Robert, which I have on shared screen. 22 THE COURT: Got it, all right. 23 BY MR. HOFFMAN: 24 Q And sir, is this an email that you sent to</p>	<p style="text-align: right;">Page 201</p> <p>1 Q Doesn't the TTO have an obligation to report 2 to LT about what is going on with its money 3 independent of anything going on in the lawsuit? 4 MR. KALTENBACH: I am going to make the same 5 objection. He is asking him if it is an obligation. 6 I don't know how that (indiscernible). 7 THE COURT: No, he can answer the question as to 8 how he understands it. My only question is how this 9 plays into the preliminary injunction hearing. 10 MR. HOFFMAN: Well, Your Honor, this goes -- 11 well, why don't you answer the question, Mr. Getty. 12 THE COURT: You can answer the question, Mr. 13 Getty. Do you have an obligation? 14 MR. GETTY: I believe seeking legal counsel and 15 taking legal counsel's advice to fulfill my 16 obligation. 17 BY MR. HOFFMAN: 18 Q So it is your position that you, as the 19 Treasurer, are not going to give LT any information 20 about any financial issue outside of the context of 21 the lawsuit? 22 A No, I think at the time that I was 23 responding to this email, it was the advice I was 24 getting, and I took the advice of counsel.</p>

<p style="text-align: right;">Page 202</p> <p>1 Q That's not the -- so you will provide 2 financial information to LT upon request? 3 MR. KALTENBACH: Your Honor, was he asking Mr. 4 Getty to promise something in the future? I just 5 don't see how that is a proper question 6 (indiscernible). 7 THE COURT: Well, you can rephrase the question. 8 What is your understanding? Rephrase the question. 9 MR. HOFFMAN: I mean -- 10 MR. KALTENBACH: Your Honor, my objection was -- 11 MR. HOFFMAN: Just a second. I will move on, but 12 this payment and this amount was the subject of much 13 discussion earlier in the day and I am entitled to ask 14 him questions about it, and I am going to. 15 BY MR. HOFFMAN: 16 Q So is the \$4.5 million dollars you 17 transferred the complete financial Resolution of all 18 issues between LT and the TTO other than the 19 subsequent billing for pro rata expenses that will 20 come out next year? 21 A Yes. 22 Q Okay. And how did you calculate this 23 figure? 24 A All the activity that has occurred from</p>	<p style="text-align: right;">Page 204</p> <p>1 MR. HOFFMAN: (Indiscernible) asked and answered. 2 THE COURT: I don't remember it being asked and 3 answered. 4 MR. HOFFMAN: Yeah, I don't appreciate these 5 constant objections. 6 THE COURT: Mr. Hoffman, go ahead. Mr. Getty, 7 answer the question. 8 BY MR. HOFFMAN: 9 Q Mr. Getty, irrespective of the questions 10 that you got from Dr. Waterman, why didn't you as the 11 TTO Trustee provide an accounting of all of the 12 financial matters you just described along with the 13 wire transfer of the \$4.5 million dollars in LT funds? 14 A That was on the advice of counsel. 15 Q Do you have in your possession an accounting 16 of the matters, the financial issues you just 17 described? 18 A I do. 19 Q Just so I am clear in terms of your answer, 20 you deducted from LT's funds or fund balance, the \$1.2 21 million dollar figure that you say was an over- 22 allocation of investment earnings, right? 23 A Part of the TTO Resolution, correct. 24 Q Okay. So if you deducted the money from</p>
<p style="text-align: right;">Page 203</p> <p>1 Fiscal Year '21, so that would have been the inclusion 2 of unallocated interest. That would have been 3 interest from the accounts associated at Countryside 4 Bank, at FNBC. It is also reflective of dollars that 5 have been received on Lyon Central High School's 6 behalf incorrectly this year, and the associated 7 transactions that were reflected out of the 8 Treasurer's office fund. 9 There was the Trustee's Resolution on 9/23, would 10 have been taken into consideration. There was also 11 some money that was returned to cash because it 12 related to outstanding checks that hadn't been cashed 13 at the end of the 90th day. And I believe that's the 14 bulk of it. there may be -- there was a bank fee that 15 was associated with a money transfer that was added, 16 and I believe that's the bulk of the journal entries. 17 Q How much was the bank fee, approximately? 18 A Ended up being \$11 dollars. 19 Q Okay. So independently, in Dr. Waterman's 20 questions, why didn't you provide an accounting for 21 all of this to LT along with the money you sent? 22 MR. KALTENBACH: And I believe, Your Honor, that 23 was asked and answered, and it was funded by 24 (indiscernible).</p>	<p style="text-align: right;">Page 205</p> <p>1 LT's fund balance, why didn't you also then add that 2 money to the other district's corresponding balances 3 as stated in the Resolution? 4 A Well, I knew we were going to have 5 evidentiary hearing today, and so the 90th day fell in 6 between and so we wanted to honor that public act to 7 provide the funds to LT by the 90th day and hadn't 8 taken any action because we had today's hearing. 9 Q Okay. So you didn't do the other side of 10 the transactions and credit the other districts' 11 account because if things don't go the TTO's way in 12 this case, you can't just take that money back from 13 those other districts, right? 14 MR. KALTENBACH: Again, I will object to the 15 extent that it is asking for a legal conclusion as to 16 what they can do or can't do. 17 BY MR. HOFFMAN: 18 Q Based on your understanding of your powers 19 as the Trustee? Correct? 20 A Can you repeat the original question? I am 21 sorry. 22 Q Sure. So you deducted the \$1.2 million 23 dollar investment allocation figure from the TTO's 24 fund balance, but you didn't make corresponding</p>

<p style="text-align: right;">Page 206</p> <p>1 credits to the other districts that under the 2 Resolution would get that money; is that correct? 3 A Correct. 4 Q And the reason you didn't do that is because 5 if you make those credits to the other districts and 6 things don't go the TTO's way in court, your 7 understanding of your powers as the Treasurer is you 8 couldn't just reverse those credits to the other 9 districts and take the money back from them; isn't 10 that true? 11 A No. 12 Q So why haven't you made the credits to the 13 other districts' accounts? What are you waiting for? 14 A The next day I left for vacation and so I 15 will say that there is the timing item of me not being 16 in the office to do it and so I haven't done it in the 17 sense that in that moment the priority was the 90th 18 day. I haven't made any sort of decision on when the 19 second half of the entry would be done. 20 Q So the answer to my next question, you have 21 no present intention to credit those other district 22 accounts, right, as you sit here today? Correct, sir? 23 A That I have no intention? 24 Q You have no present intention, as you sit</p>	<p style="text-align: right;">Page 208</p> <p>1 MR. HOFFMAN: I just want an answer. 2 THE COURT: He did answer it. He said he could. 3 MR. HOFFMAN: He said he could, okay, fair 4 enough. 5 THE COURT: You can ask him what the basis of 6 that is. 7 BY MR. HOFFMAN: 8 Q And what do you believe gives you the 9 authority to reverse credits made to the districts? 10 Does that fall within your correcting errors 11 authority? 12 A Correct. 13 Q So if you can reverse credits made under the 14 Resolution of the other districts, do you have any 15 understanding as to why it is the TTO's position in 16 this case that LT would have to sue all of the other 17 districts to get the relief that it seeks in this 18 case? 19 MR. KALTENBACH: And Your Honor, I am going to 20 object. That misstates the record. And that is our 21 motion to dismiss that we just talked about, and we 22 said that we are going to move on from. 23 MR. HOFFMAN: Your Honor, I think I am entitled 24 to ask him.</p>
<p style="text-align: right;">Page 207</p> <p>1 here today, to credit the other district accounts in 2 the amounts laid out in the Resolution? 3 A To tell you the truth, I have not -- I have 4 not decided when I would make the second entries. 5 Q Okay. So as of today, you have no present 6 intention to do that, right? You haven't decided? 7 A Correct. 8 Q And isn't the reason, because once you make 9 those credits to the other districts, you can't just 10 reverse those credits and take the money back as you 11 understand your authority as Treasurer; isn't that 12 true? 13 MR. KALTENBACH: And I will object. I will 14 object. That's asked and answered about 60 seconds 15 ago. 16 THE COURT: and it has been asked and answered. 17 MR. HOFFMAN: I don't believe he has answered 18 that question in that way. 19 BY MR. HOFFMAN: 20 Q Can you just take the money back as you 21 understand it? 22 MR. KALTENBACH: Your Honor, that's the same 23 objection. Mr. Hoffman may not have liked the answer, 24 but it was answered.</p>	<p style="text-align: right;">Page 209</p> <p>1 THE COURT: It is asking him to comment -- a 2 motion -- I think this is really more appropriate for 3 argument. 4 MR. HOFFMAN: Okay. All right. I will withdraw 5 the question. 6 THE COURT: And I understand your position and I 7 understand where you are going with it, but I don't 8 know that this is the right witness to talk about 9 that. I think it is more of an argument. 10 MR. HOFFMAN: Okay. 11 BY MR. HOFFMAN: 12 Q Okay. I just want to run through a couple 13 more exchanges. Let's look at Exhibit E, as in 14 Edward, please. 15 THE COURT: E, as in Edward, okay. 16 BY MR. HOFFMAN: 17 Q Okay. Mr. Getty, let me just see if you're 18 listed as a recipient of this letter. On page 2, 19 you're listed as a carbon copy of a letter that Dr. 20 Kilroy sent to the TTO on June 25th, 2021. Do you 21 recall receiving this letter? 22 A I do. 23 Q Okay Any objection to its admission? 24 MR. KALTENBACH: No, Your Honor.</p>

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1 THE COURT: It'll be admitted.
 2 MR. HOFFMAN: Okay.
 3 (WHEREUPON, said document
 4 was marked as LT Exhibit E
 5 for Identification.)
 6 BY MR. HOFFMAN:
 7 Q And then this was a letter that transmitted
 8 the Resolution of the LT Board withdrawing from the
 9 TTO. You see -- you see that? Here is the
 10 Resolution?
 11 A Are you asking me?
 12 Q Yes. This is how you got the Resolution,
 13 right?
 14 A Correct.
 15 Q And you understood that LT had a very short
 16 amount of time, a short window to withdraw from the
 17 TTO because the Judge's decision became final around
 18 June 22, and then the TTO had to withdraw by June 30
 19 in order to be out for the next fiscal year. Does
 20 that sound right to you?
 21 A That is right.
 22 Q Okay. And had TTO -- strike that.
 23 Had LT requested you as the Treasurer to retain
 24 the services of an independent forensic accountant to

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1 assist with issues between LT and the TTO and the
 2 withdrawal from the TTO system?
 3 A There was just an audit. They asked for a
 4 third-party audit, I don't remember them asking for a
 5 forensic accounting firm.
 6 Q Okay. Isn't it true that Dr. Kilroy after
 7 the Judge reached his decision asked the TTO to get an
 8 independent accountant to be involved in financial
 9 issues between the parties?
 10 A It was more specific than that.
 11 Q Okay. Tell me what you recall.
 12 A They asked for an independent auditor,
 13 independent of the Treasurer's office auditor, to
 14 handle just the unallocated interest income, I believe
 15 I'm using the proper term. That amounts to only for
 16 that particular amount.
 17 Q Okay. And then the -- just find this in
 18 here. Okay, second to last paragraph on page 1 of
 19 this letter, Dr. Kilroy says: We are requesting your
 20 most recent reconciliation, reflecting the assets and
 21 investments held by the Trustees. For the benefit of
 22 the district, we will review the reconciliation and
 23 provide you with any questions we have and request any
 24 documents we need. Do you see that?

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1 A I do.
 2 Q Did you provide a reconciliation to LT as
 3 requested?
 4 A That would be the Treasurer's office
 5 investment report that is sent to all the member
 6 districts and posted online.
 7 Q But Dr. Kilroy specifically asked you for
 8 assets and investments held by the Trustees for the
 9 benefit of the district, meaning LT, right?
 10 A Right.
 11 Q He didn't ask you for the investment report
 12 relating to all districts, did he?
 13 A Again, it is one in the same.
 14 Q All right.
 15 MR. HOFFMAN: And we've admitted E, I believe,
 16 yes.
 17 THE COURT: Yes.
 18 MR. HOFFMAN: Okay.
 19 BY MR. HOFFMAN:
 20 Q F is an email that you sent to LT with
 21 copies to other people on June 28, 2021, correct?
 22 A Correct.
 23 Q Okay.
 24 MR. HOFFMAN: And any objection to admitting F

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1 into evidence?
 2 MR. KALTENBACH: I have none, Your Honor.
 3 THE COURT: Okay. It will be admitted.
 4 (WHEREUPON, said document
 5 was marked as LT Exhibit F
 6 for Identification.)
 7 BY MR. HOFFMAN:
 8 Q Okay. And so this was setting up the
 9 transfer of part of LT's funds to LT on July 1, 2021,
 10 correct?
 11 A Correct.
 12 Q Okay. And you were already in the -- the
 13 part that I'm looking at that begins, a soft close
 14 will be performed and so forth.
 15 You were already and you were expecting to
 16 liquidate. Let me start over -- strike that.
 17 It says here the LTHS's fund balance/liability
 18 within the Lyons Township Trustees of Schools Agency
 19 Fund will be liquidated the morning of July 1, 2021,
 20 and remitted by three separate accounts, correct?
 21 A Correct.
 22 Q So as of July 1, your plan was to have all
 23 of the assets in LT's agency fund liquidated, right?
 24 A Converted to cash, correct.

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1 Q Is that what liquidated means to you,
 2 converted to cash?
 3 A In this scenario, yes.
 4 Q Okay. Then that's all I care about. And
 5 then you were going to place cash in the money market
 6 accounts at FNBC Bank and a Countryside Bank, as well
 7 as sending money to LT directly, right?
 8 A Correct.
 9 Q Okay. And let's take a look at G, as in
 10 Garfield. This is the letter -- this is an email that
 11 you sent to LT and others on, and it looks like June
 12 30, 2021, at five o'clock, right?
 13 A Correct.
 14 Q Okay.
 15 MR. HOFFMAN: Any objection to admitting this
 16 into evidence?
 17 MR. KALTENBACH: No objection, Your Honor.
 18 THE COURT: It is admitted.
 19 MR. HOFFMAN: Okay.
 20 (WHEREUPON, said document
 21 was marked as LT Exhibit G
 22 for Identification.)
 23 BY MR. HOFFMAN:
 24 Q So let's go down, we've got the soft close

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1 and what you were expecting the fund balance, LT's
 2 ending fund balance, you were expecting based on the
 3 soft close you described to be \$47,731,790.72,
 4 correct?
 5 A That was the number that was reflected in
 6 the Treasurer's office general ledger at the end of
 7 business on 6/30. Again, the general ledger, not the
 8 agency.
 9 Q Okay. Well, this refers to the LT fund
 10 balance, right?
 11 A Correct.
 12 Q Okay. And this is based on transactions
 13 that you had entered into the general ledger as of
 14 this time, right?
 15 A Correct.
 16 Q And there was always a possibility that, you
 17 know, there was a check sent out on this day to one of
 18 LT's vendors that would impact this balance amount,
 19 right, for example?
 20 A No, no.
 21 Q No?
 22 A No.
 23 Q Okay. So you sent all but \$6 million of
 24 this amount to LT, correct?

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1 A Correct.
 2 Q Okay. And you put \$3 million in each of
 3 these described accounts, yes?
 4 A Correct.
 5 Q Each of the \$3 million dollars put into
 6 those accounts was -- constituted liquid assets,
 7 correct?
 8 A Yes.
 9 Q Okay. And how did you arrive at the \$6
 10 million dollar figure?
 11 A I thought it was a safe amount that would
 12 provide -- if a financial transaction needed to happen
 13 on LTH's behalf, if our account was accidentally
 14 debited and that needed to be paid, and also felt that
 15 the spirit of the law, you know, giving them really,
 16 you know, significant portion, was showing good faith.
 17 Q Did you hold on to this money in part
 18 because you expected or thought there was a
 19 possibility that the TTO would debit Lt's fund balance
 20 for investment-earning allocations?
 21 A At this time, no.
 22 Q Why did you put it into two different banks?
 23 A It's really difficult to put \$3 million
 24 dollars into any bank, and so my goal was to keep that

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1 money within Lyons Township. And there's the two
 2 banks that are in Lyons Township, just split the
 3 dollar amount that I thought was an appropriate amount
 4 for going through this type of unwind.
 5 Q Okay. ow we've admitted Exhibit G, we're
 6 looking at Exhibit H, as in Harry. This is an email
 7 that Brian Stachacz and LT sent to you and others on
 8 July 2, 2021, correct?
 9 A Correct.
 10 Q And LT, among other things, objected to you
 11 keeping \$6 million dollars of their funds in these two
 12 bank accounts, right?
 13 A Correct.
 14 Q Okay. And this letter didn't persuade you
 15 to give that money to LT, right?
 16 A Correct.
 17 Q What did you do upon (indiscernible)? Did
 18 you go back and look at the points that -- did you do
 19 anything after receiving this letter to determine
 20 whether you should consider releasing the funds?
 21 A I forwarded it on to our legal counsel to
 22 seek advice.
 23 Q Okay. And did you review it with anybody at
 24 the TTO?

<p style="text-align: right;">Page 218</p> <p>1 A It was forwarded on to the Trustees. 2 Q Did you talk with the Trustees about it? 3 A I talked with them about it at one of the 4 board meetings in closed session, about receiving it. 5 Q Okay. And were they in agreement that the 6 TTO should continue to hold on to this \$6 million 7 dollar amount? 8 MR. KALTENBACH: I'm sorry, Your Honor, if that's 9 in closed session and counsel was present for that, 10 which it sounds like they would have been, although I 11 certainly wasn't there. It sounds like the ensuing 12 discussion may have been privileged. It is not clear 13 to me whether counsel was present for that discussion. 14 THE COURT: Was counsel present for that 15 discussion, Mr. Getty? 16 MR. GETTY: They were. 17 BY MR. HOFFMAN: 18 Q I don't want you to tell me anything that 19 the lawyers told you or anything lawyers asked. What 20 I am trying to find out, is this decision to hold on 21 to \$6 million dollars, was this your decision or was 22 this a joint decision that you made with the Trustees? 23 A I came up with a dollar amount, and the 24 Trustees agreed on the amount.</p>	<p style="text-align: right;">Page 220</p> <p>1 also refused to reschedule it; is that true? 2 A Well, at that point, there was already a 3 threat of legal action being taken. 4 Q I didn't ask you why (indiscernible). I 5 didn't ask you why you wouldn't meet with LT. But 6 isn't it true you canceled the meeting and refused to 7 reschedule it, yes, or no? 8 A I didn't refuse to reschedule. I said that 9 all meetings with the threat of litigation should be 10 recorded and thought that the Treasurer's Office board 11 meeting provided a forum for that meeting to take 12 place. 13 Q But you invited LT to show up at the TTO 14 Board of Trustees meeting and talk about financial 15 issues there? 16 A Correct. 17 Q Okay. 18 MR. HOFFMAN: Your Honor, I just want to take one 19 minute, make sure I don't have any other questions for 20 this witness. And give me one second and then I'll 21 turn them over. Is there any objection to Exhibit H, 22 as in Harry, being admitted in evidence? 23 MR. KALTENBACH: We have no objection, Your 24 Honor.</p>
<p style="text-align: right;">Page 219</p> <p>1 Q Okay. And now there's also a number of 2 requests for information and documentation in this 3 letter, right? 4 A (Nonresponsive). 5 Q They raised certain finance -- LT raises 6 financial issues. They asked for a complete list of 7 the financial issues other than trailing checks that 8 remain to be resolved. Then they ask you what you 9 mean by the run out and unreconciled activity. They 10 asked for a thorough accounting with full supporting 11 documentation. Did you provide any of that to LT? 12 A My plan was to provide that, correct. 13 Q No, I didn't ask you what your plan was. I 14 asked you whether you provided any of this to LT, yes 15 or no, please. 16 A No. 17 Q Okay. And is it true that LT reached out to 18 you personally and set up a meeting with you and your 19 group, whoever you wanted to have, to discuss issues 20 between the parties? 21 A Correct. 22 Q And that was set for September 8th, right? 23 A Correct. 24 Q And you had to cancel that meeting, but you</p>	<p style="text-align: right;">Page 221</p> <p>1 MR. HOFFMAN: Okay. 2 (WHEREUPON, said document 3 was marked as LT Exhibit H 4 for Identification.) 5 MR. HOFFMAN: I have admitted into evidence at 6 this time, E, F, G, H, I, J, K, M, N, P, Q, R. 7 THE COURT: I can tell you, I have N, as in 8 Nancy; M, I, J, K, P, Q. I don't think you asked to 9 admit Exhibit R. 10 MR. HOFFMAN: Okay. 11 THE COURT: Are you asking to admit it? 12 MR. HOFFMAN: Is there any objection to Exhibit 13 R, that was Mr. Getty's email of September 28, 2021. 14 MR. KALTENBACH: I am sorry, Jay, is that Exhibit 15 R, to your -- there isn't an Exhibit R to your 16 Complaint. 17 THE COURT: No, these were all exhibits that want 18 provided in a separate -- 19 MR. HOFFMAN: Here is Exhibit R. It is right 20 here. It is right here. 21 MR. KALTENBACH: Yeah, yeah, no, Your Honor, we 22 have no objections. 23 THE COURT: Okay. Then that will be admitted. 24 (WHEREUPON, said document</p>

<p style="text-align: right;">Page 222</p> <p>1 was marked as LT Exhibit R 2 for Identification.) 3 MR. HOFFMAN: Okay. 4 THE COURT: And then I have E, F, G, H and that's 5 it. 6 MR. HOFFMAN: I, J, K. So I didn't do them in 7 order, but basically. 8 THE COURT: M, I, J, K, yes, I have those. 9 MR. HOFFMAN: So by the alphabet, E, F, G, H, I, 10 J, K, and then M, N, and then P, Q, R. 11 THE COURT: Yes. 12 MR. HOFFMAN: Okay, very well. 13 BY MR. HOFFMAN: 14 Q Sir, I am going to ask you just one last 15 thing about a reference you made earlier to a January 16 2021 analysis that you did on investment income. Do 17 you remember that testimony? 18 A I don't remember what it was in response to. 19 Q Okay. Well -- 20 A I do remember referencing it. 21 Q Okay. So I'm going to look at Exhibit T, as 22 in Thomas, in this case. This is LT's response to the 23 TTO's motion to voluntarily dismiss its investment 24 earning claim filed in the 2013 lawsuit on June 25,</p>	<p style="text-align: right;">Page 224</p> <p>1 speaks for itself, but I don't know what some of the 2 other documents are, and that's kind of my problem 3 with admitting it into evidence without any sort of -- 4 I just don't know what they are, so I don't know if 5 there's any context for what chart is. Like the 6 agenda, I don't have a problem with, obviously. 7 MR. HOFFMAN: Well, I am specifically going to 8 ask him questions about this. 9 MR. KALTENBACH: Well, if you ask him questions, 10 maybe that will solve the problem. 11 MR. HOFFMAN: Okay. So let's just do this. 12 BY MR. HOFFMAN: 13 Q Starting with Page 57 of the PDF of Exhibit 14 T, do you recognize this, sir, as the agenda for a TTO 15 board meeting to be held January 25, 2020? 16 A I do. 17 Q Okay. And at this time, is it also -- well, 18 I see. Is it also correct that there is an error as 19 there often is in January dates and this is really 20 from January 25, 2021. And I will direct your 21 attention to point number four where there is an 22 agenda on the item for approval of the December 21, 23 2020, meeting. Do you see that? 24 A Yeah, we also got it right in the middle of</p>
<p style="text-align: right;">Page 223</p> <p>1 2021. 2 MR. HOFFMAN: As we lay out in the reply brief, 3 Your Honor, just as context, the TTO attempted to 4 voluntarily dismiss its investment earnings' claim in 5 the middle of a trial during LT's case-in-chief at the 6 trial. And the Court briefed it, heard an argument, 7 and denied the motion to voluntarily dismiss. So this 8 is this has an exhibit that I want to use here. And 9 that's exhibit -- oh, the colorful one, okay. 10 So I only want to admit in evidence, Exhibit H. 11 So it's Page 57 of the PDF though 62. Any objection? 12 Just so we know what we are looking at, this is an 13 agenda of a TTO board meeting from January 25, 2021. 14 It's the agenda packet that has the agenda as well as 15 the matters -- an attachment of the matters related to 16 the possible withdrawal of Lyons Township High School 17 District 204 at the conclusion of fiscal year 2021. 18 And then it has a spreadsheet or chart, rather, and 19 then it has a harder to read spreadsheet right behind 20 it. This is posted on the TTO's website. That's 21 where we took it from. 22 MR. KALTENBACH: Jay, I will take your word that 23 this was all part of that, I don't have in front of 24 me. I guess the thing is like the agenda kind of</p>	<p style="text-align: right;">Page 225</p> <p>1 the page where it says the Board of Trustees of 2 Schools have called a regular meeting. That one got 3 updated, not the one up top. 4 Q Okay. So this is really for a January 25, 5 2021, board meeting, right? 6 A Correct. 7 Q Okay. And this is the agenda that I'm 8 scrolling through, and then you recognize that this is 9 the type of header that you guys use for agenda items 10 in the agenda packet that's posted online? 11 A Correct. 12 Q Okay. And then the next page is a chart you 13 prepared on the -- an investment earnings analysis 14 that you did? 15 A Correct. 16 Q Okay. And then there's really -- it's hard 17 to read, but if I blow it up, we can see the title of 18 the spreadsheet behind it. This is the spreadsheet 19 that has detail that went into the chart right before 20 it, correct? 21 A Correct. 22 Q Okay. And the chart in the spreadsheet you 23 prepared as part of the analysis that you described 24 earlier in your testimony on investment rates, right?</p>

<p style="text-align: right;">Page 226</p> <p>1 A At this point, this was a working paper, and 2 we did preface it as such at the meeting. 3 Q I didn't ask you whether it was final or 4 working paper, did I? I mean, this is -- these are 5 documents you prepared, right? That's what I asked 6 you. 7 A Well, that was compound. 8 Q Sir, these are documents you prepared as 9 part of your analysis, yes? 10 A Correct. 11 Q Okay. 12 MR. HOFFMAN: And is there any objection to 13 admitting the agenda and the following items on page 14 57 through 62 of Exhibit T? 15 MR. KALTENBACH: We don't have an objection, Your 16 Honor. 17 THE COURT: Okay, they will be admitted. 18 (WHEREUPON, said document 19 was marked as LT Exhibit T 20 for Identification.) 21 BY MR. HOFFMAN: 22 Q Okay. And, sir, on January 25, 2021, the 23 lawsuit, the trial of the lawsuit was ongoing, 24 correct?</p>	<p style="text-align: right;">Page 228</p> <p>1 all of the member districts. 2 Q Okay. And then this spreadsheet is for 3 fiscal years 1995 through 2012, correct? 4 A Correct. 5 Q Okay. And those are the numbers that went 6 into this chart, right? 7 A Correct. 8 Q So the chart just covers the period 1995 9 through 2012, right? 10 A Correct. 11 Q Why was your analysis limited to that time 12 period? 13 A That was the scope the Trustees asked me to 14 investigate. 15 Q And wasn't that the same time period at 16 issue in the lawsuit? 17 A That was the time at the same time frame. 18 Q All right. 19 MR. HOFFMAN: Thank you, sir. I appreciate your 20 patience, and I have no further questions. 21 THE COURT: Okay. Very good, thank you. What 22 are we going to do? Let's talk for a moment about 23 scheduling. It's now almost four o'clock in the 24 evening. Can somebody take the -- whoever's got the</p>
<p style="text-align: right;">Page 227</p> <p>1 A Correct. 2 Q It had started in November 2020, and it 3 finished March of 2021, right? 4 A Correct. 5 Q And at that point, the Court was being asked 6 to agree with an analysis that the TTO's expert 7 witness, Jim Martin, had done regarding its investment 8 earnings claim, right? 9 A Correct. 10 Q Okay. So tell me, why did you go do a 11 different and separate analysis outside of the legal 12 proceeding? Is it because the Trustees asked you to 13 or was it another reason? 14 A Correct. The Trustees asked me to do an 15 analysis for all of the member districts. 16 Q Okay. And you came up with a number for LT 17 of \$1,537,045.31; do you see that? 18 A I do. 19 Q Okay. And how did that compare to the 20 figure that Jim Martin came up with that was part of 21 the lawsuit? 22 A I believe Jim Martin's figure was \$1.4. 23 Q Why was your number different? 24 A I believe because my analysis encompassed</p>	<p style="text-align: right;">Page 229</p> <p>1 document up, Mr. Hoffman? 2 MR. HOFFMAN: Oh, I apologize, yes. Sorry. 3 THE COURT: Yeah, no problem. So Mr. Kaltenbach, 4 do you want to do your examination of Mr. Getty? And 5 if so, how long do you think it's going to take? 6 MR. KALTENBACH: I certainly need a break before 7 I launch into anything. I think we've been going for 8 three hours now, Your Honor, so I need a break. I've 9 got notes all over the place that I need to kind of 10 put together to try to make this not scattershot. I 11 mean, I think it's going to take some time. 12 THE COURT: Okay. And so, Mr. Hoffman, how many 13 other witnesses do you plan to call? 14 MR. HOFFMAN: Well, again, I am going to call Dr. 15 Waterman. 16 THE COURT: Okay. 17 MR. HOFFMAN: I am going to call all the 18 witnesses that the TTO requested unless they tell me 19 they don't need or want them. And then I may or may 20 not -- I think I'm going to call Michael Theissen the 21 end, but we certainly won't be doing that today. 22 THE COURT: No. All right. So it sounds like 23 we're going to break for the day, right? 24 MR. KALTENBACH: Well, there's no way we're going</p>

<p style="text-align: right;">Page 230</p> <p>1 to finish today, Your Honor. 2 THE COURT: All right. 3 MR. HOFFMAN: Well, Your Honor, I would hope that 4 we can finish up with Mr. Getty and be done and over 5 with it. I would hope that Mr. Kaltenbach could have 6 his questions of Mr. Getty, and not have that continue 7 on to another day. I have a concern about that. And 8 then the question then becomes how long the Court 9 wants to go? 10 MR. KALTENBACH: I apologize, Your Honor. I, you 11 know, if Mr. Hoffmann is insistent on getting Mr. 12 Getty done before the end of the day, he shouldn't 13 have taken three hours with him, respectfully. 14 So yes, I don't think I'm going to finish Mr. 15 Getty today. Obviously, Mr. Getty and I will not 16 discuss the substance of his testimony. 17 MR. HOFFMAN: Oh, I am sorry. I might have been 18 misunderstood. I was -- all I was saying was let's 19 get the cross going, if it doesn't finish today, I 20 will perfectly understand that. I just meant not 21 deferring the entire cross to a later date, that's all 22 I meant. 23 MR. KALTENBACH: I've got a lot of notes that I 24 need to go through, and you know I think respectfully,</p>	<p style="text-align: right;">Page 232</p> <p>1 called today. 2 THE COURT: Yes. 3 MR. HOFFMAN: To release them. 4 THE COURT: It might be the 29th. How does 5 everybody look on that day? Jon, we are open except 6 we have a prove-up, right? 7 MR. HOFFMAN: It is fine with me, Your Honor, 29 8 is good. 9 THE CLERK: There is also a ten o'clock hearing. 10 THE COURT: Oh, there is? I don't even have that 11 in my book. What's the case? 12 THE CLERK: West Dock v. Lexington. 13 THE COURT: Oh, is that a motion to reconsider? 14 THE CLERK: Yes, to reconsider. 15 THE COURT: All right, I don't have that day 16 because that's a big case. Is American Heartland at 17 10:45? 18 THE CLERK: The prove-up? 19 THE COURT: Yes. 20 THE CLERK: That's at 9:30. 21 THE COURT: Okay. So -- 22 THE CLERK: November 1st is open. 23 THE COURT: What is it? 24 THE CLERK: November 1st, the following Monday,</p>
<p style="text-align: right;">Page 231</p> <p>1 we've frankly been going for, you know, six hours 2 right now today. And, you know, Mr. Hoffman just 3 finished three hours of his direct examination, so I 4 would like not to start today, Your Honor. We're not 5 going to finish today, so I don't know what the 6 (indiscernible) are. 7 MR. HOFFMAN: Well, you know, I do have a concern 8 about that, Your Honor, I think we should make use of 9 our available time. And I think Mr. Kaltenbach should 10 be ready to proceed and not just kick everything off 11 to another day. I think that's a mistake. 12 THE COURT: No, I think we should do -- I think 13 we should at least get started with Mr. Kaltenbach. I 14 mean, you know, Mr. Kaltenbach, I'm sure that you had 15 an understanding that Mr. Getty would be here and 16 ready to testify today. So I'm sure that you're 17 prepared to at least begin your examination of him. 18 MR. KALTENBACH: I'd still like a break before I 19 begin, though, Your Honor. 20 THE COURT: All right, it's four o'clock now. Let 21 me see, yeah, so I'm just I'm looking at my schedule 22 for when we can continue this process. 23 MR. HOFFMAN: And Your Honor, I am just going to 24 tell the other witnesses that they don't have to be</p>	<p style="text-align: right;">Page 233</p> <p>1 but there is a trial on Thursday, and you are out 2 Wednesday. 3 THE COURT: That Wednesday I might not be out 4 because the thing I had to do is still kind of up in 5 the air. I might have that Wednesday open up, 6 Wednesday the 3rd. All right. What if we set this 7 for the 1st, November 1st? 8 MR. HOFFMAN: Sure. That sounds good, Your 9 Honor. 10 THE COURT: Jon, I don't have any hearings that 11 day; is that right? 12 THE CLERK: No. That day is open. 13 THE COURT: All right, so I am going to put it 14 down for 10:00. I will save the rest of the day for 15 it. 16 MR. KALTENBACH: Mr. Getty texted me, he is down 17 the hall. He is out-of-town November 1st. 18 THE COURT: That day? November 1st? 19 MR. KALTENBACH: That day, yes. 20 THE COURT: You are going to be out-of-town, or 21 you are going to be unavailable, Mr. Getty? 22 MR. GETTY: Correct. 23 THE COURT: Okay. What about Friday, the 5th? 24 Jon, I don't have anything on that day?</p>

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1 THE CLERK: It is open as well.
 2 THE COURT: Okay. That another good day or
 3 Monday, the 8th looks pretty good, too.
 4 MR. HOFFMAN: The 5th is fine with me, Your
 5 Honor.
 6 THE COURT: Is everybody else okay on that day?
 7 MR. HOFFMAN: I will have to check with the
 8 witnesses that the TTO identified from LT and circle
 9 with all of them and we will see how that goes. I
 10 can't make any promises about them just now.
 11 THE COURT: What do you want to do about that?
 12 MR. HOFFMAN: We will do our best. They have an
 13 ex-employee that they subpoenaed. I don't know if
 14 they really want his testimony or not, but I would
 15 have to -- just like they are asking Mr. Getty, I will
 16 have to ask them. But I think we should go ahead and
 17 get the November 5th date. And again, between now and
 18 then the TTO may not want to question all of these
 19 people.
 20 THE COURT: All right, so let's at least book it
 21 for November 5th. So it is in my book now for the 5th
 22 at 10:00 a.m. So that's what we will do to continue.
 23 Mr. Kaltenbach, you said you wanted a break to get
 24 your notes together. It is four o'clock on my clock.

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1 Why don't we come back at 4:15. Is that enough time
 2 for everybody?
 3 MR. HOFFMAN: That's great, Judge. Sounds good.
 4 (WHEREUPON, a short break
 5 was taken.)
 6 THE COURT: All right, I am back. Is everybody else
 7 back, too.
 8 MR. KALTENBACH: I believe so, Mr. Getty, yes, he
 9 is just walking into the office down the hall.
 10 THE COURT: Okay.
 11 MR. HOFFMAN: I am back, Your Honor. Your Honor,
 12 I have one point I wanted to mention. Mr. Getty
 13 referred to an accounting analysis that he did on the
 14 \$4.5 million dollar figure. We would like to get that
 15 either by agreement or by order of Court. It is
 16 something relevant to this case and certainly we are
 17 entitled to reasonable expedited discovery. He said
 18 he had it.
 19 THE COURT: Right now, does that have any bearing
 20 on the motion that is up right now?
 21 MR. HOFFMAN: Well, it might because if we get
 22 it, Your Honor asked if there is a smaller amount that
 23 we would agree to, less than the \$6 million in light
 24 of the \$4.5 million dollar payment. So if we can see

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1 that accounting analysis that he prepared and has in
 2 which we should be able to see. You know, we may be
 3 able to address that issue more intelligently, that
 4 the Court asks us about.
 5 THE COURT: Yes. Mr. Kaltenbach, are you able to
 6 provide that?
 7 MR. KALTENBACH: Your Honor, at some point we are
 8 going to provide that. I haven't even reviewed it
 9 myself, yet. And I certainly want to review it
 10 myself. Mr. Getty had every intention of providing
 11 that right up until the moment they said they were
 12 going to sue.
 13 MR. HOFFMAN: Well, I don't really think it is
 14 relevant as to why Mr. Getty didn't give it to us, but
 15 it is a document that he prepared that breaks down his
 16 analysis and we certainly are entitled to see it and I
 17 don't know what Mr. Kaltenbach review of it would or
 18 would not do based on what the witness' testimony is.
 19 So I would like to get that by the end of the day
 20 tomorrow. I don't see any reason why it should be
 21 delayed and why I should have to file a formal
 22 document request. That seems unnecessary and kind of
 23 unreasonable.
 24 MR. KALTENBACH: Your Honor, if Mr. Hoffman is

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1 asking perhaps that I discovery, I think my point
 2 then, we can agree on an expedited discovery schedule
 3 and maybe a lot of this can get streamlined instead of
 4 what appears to be all this deposition testimony taken
 5 in a preliminary injunction hearing. (Indiscernible).
 6 MR. HOFFMAN: (Indiscernible).
 7 THE COURT: Hold on.
 8 MR. HOFFMAN: I am asking for one document to be
 9 given to us, which is relevant to this witness'
 10 testimony, and I see zero reason why the TTO should be
 11 playing keep-away with it and not giving it to us.
 12 This seems unreasonable.
 13 THE COURT: Well, I mean we can do it one of two
 14 ways. I mean I can make a ruling on whether or not
 15 you are entitled to the preliminary injunction and
 16 then we can talk about the amount. We could do that
 17 as a subsequent hearing and then that issue and that
 18 document would become quite relevant.
 19 Or we can do it all at one time and it seems like
 20 maybe Mr. Kaltenbach and Mr. Quinlan want to do it in
 21 a separate -- not a separate hearing, but a ruling
 22 (indiscernible)
 23 MR. QUINLAN: (Indiscernible). We don't think
 24 you're going to get there but given that we are not

<p style="text-align: right;">Page 238</p> <p>1 going to do the hearing, Judge, you know, obviously 2 until next month, it might make sense to do some 3 limited expedited discovery if they can give us the 4 documents to support their positions and TRO. You 5 know, even if we limit it, which I would be fine with 6 though (Indiscernible). 7 THE COURT: (Indiscernible) 8 MR. HOFFMAN: (Indiscernible). 9 THE COURT: Time out. Time out. Let's see if 10 you guys can work this out. It sounds like you are 11 willing to give up some documents, Mr. Quinlan. 12 MR. QUINLAN: Yes, I would if (Indiscernible). 13 THE COURT: Yes. 14 MR. QUINLAN: To try and get this so we, you 15 know, try and get this resolved. And if we get some 16 document from them to support their claim, we will 17 give some to ours and then hopefully when we appear, I 18 am (Indiscernible) forget this because I think the 19 court is probably with, he is my age category, but it 20 is getting up there. 21 THE COURT: You know, you are hard to hear 22 because I think you are far away from the microphone. 23 MR. QUINLAN: Oh. We go back the 5th of 24 November, if my recollection is correct, I think,</p>	<p style="text-align: right;">Page 240</p> <p>1 fine. 2 THE COURT: Mr. Hoffman. 3 MR. HOFFMAN: Your Honor, that's a problem. 4 Look, as you can tell, there's a history in this case. 5 I spent five years trying to get information from this 6 -- 7 MR. QUINLAN: Not from me. 8 MR. HOFFMAN: Excuse me. I spent five years 9 trying to get information from the TTO and I had to 10 file multiple motions to compel, which were largely 11 granted. And what I'm asking for is a simple document 12 that the witness just testified to creating, having to 13 do with a calculation that he made that impacts our 14 money. And I see zero reason why that should not be 15 provided to me tomorrow. 16 THE COURT: We are not in discovery right now, 17 right? I mean, are you entitled to it? You will be 18 entitled to it, but we're not even at issue yet, 19 right, so hold on a second. Let's see if we can make 20 an agreement here. What is it, Mr. Quinlan, that your 21 client needs? Do you have any specific documents? 22 MR. QUINLAN: I would want, Judge, anything from 23 204, right, that would support their position that 24 there is no irreparable harm and that they don't have</p>
<p style="text-align: right;">Page 239</p> <p>1 yeah, is that right, yeah. 2 THE COURT: The what? 3 MR. QUINLAN: I said I think we are back November 4 5th, so we have a little over a month, right? 5 THE COURT: I will do it under a month, but yeah. 6 MR. QUINLAN: Why don't we agree to that, and I 7 could do that, we give them some documents, they give 8 us some and it will hopefully expedite these 9 witnesses. I am even happy to keep it tight and 10 limited to the two elements that we, at least on our 11 end think they won't be able to prove. And if they 12 can give us what they think supports that, maybe we 13 will have a change of mind, maybe we won't. But then 14 it gives us something that we can cross-examine the 15 witnesses on. 16 MR. KALTENBACH: And there's always the remote 17 possibility, Your Honor, that we actually reach an 18 agreement. 19 MR. QUINLAN: Well, that's what I said. Maybe 20 will, you know, if they can demonstrate it and we 21 don't need the Court, but if we get those documents 22 that support their position, it's also, given that the 23 movement, it makes sense, and we'll give up documents 24 that we think support the fact that they don't. I am</p>	<p style="text-align: right;">Page 241</p> <p>1 an adequate remedy at law. And if they could get me 2 those documents, I'm happy to do the same on my side. 3 I am just (Indiscernible). 4 THE COURT: Well, where are those documents? I 5 mean, isn't the proof of that (Indiscernible)? 6 MR. QUINLAN: All that, communications and things 7 that relate to the fact that they are concerned they 8 won't get paid, or they will get paid and what the 9 basis for that is. 10 THE COURT: (Indiscernible) 11 MR. QUINLAN: (Indiscernible). 12 MR. HOFFMAN: (Indiscernible). 13 THE COURT: The evidence is going to be in people 14 like Mr. Gettys testimony, right? Isn't that going to 15 be where the evidence is? 16 MR. QUINLAN: (Indiscernible) communications 17 internal on their end, I would imagine. 18 MR. HOFFMAN: Here is what is going to happen. 19 Judge -- 20 MR. QUINLAN: Hold on. You know what's going to 21 happen, Jay? Whatever the Judge says. So why don't 22 we all relax. Sorry, Judge. 23 THE COURT: Guys, I know that there is a lot of 24 emotion, so let's just try to work together for now.</p>

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1 MR. HOFFMAN: What I just heard from Mr. Quinlan
 2 was he is going to send me a bunch of contention
 3 requests like give me all the documents that you feel
 4 support your position on this issue. And there's
 5 already been enough time wasted in this proceeding on
 6 gains. I want to get to the heart of this matter.
 7 I'm asking for one simple thing that the witness just
 8 testified about that he knows he has, and he has a
 9 fiduciary duty to give to my client.
 10 I don't understand why this is now turning into
 11 let's exchange requests. I don't want to exchange
 12 document requests with the TTO. I don't want to
 13 change interrogatories with the TTO. I've done it
 14 before, and it is not a pleasant experience. And
 15 we're in the middle of this hearing, I don't want a
 16 complicated and create other fights. I don't want to
 17 come back November 5th and have a big fight over a
 18 motion to compel.
 19 THE COURT: Right.
 20 MR. HOFFMAN: We hear this is how today's hearing
 21 got derailed with all these most last minute motions
 22 from the TTO.
 23 THE COURT: Let me ask you this, Mr. Quinlan, why
 24 isn't Mr. Getty obligated by his fiduciary duty to

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1 provide this document to Mr. Hoffman?
 2 MR. QUINLAN: One, I am not a hundred percent
 3 sure he has a fiduciary duty to provide that document.
 4 THE COURT: Why not?
 5 MR. QUINLAN: I guess I would have to look at it
 6 and see what the document is. And second of all they
 7 are not a member.
 8 THE COURT: Now, that's true.
 9 MR. QUINLAN: So I'm not trying to split hairs,
 10 but they're not (indiscernible).
 11 THE COURT: But isn't it going to help get the --
 12 isn't a provision of that document --
 13 MR. QUINLAN: I thought I had a plan that would
 14 move things along. Mr. Hoffman wants to be one-sided.
 15 I don't know want to fight about this. I am happy to
 16 look at it, but it doesn't seem like it is
 17 particularly relevant, and maybe we will split it up
 18 into two. I just don't like the idea (indiscernible).
 19 THE COURT: It is relevant. It is relevant if
 20 the -- if there is going to be a preliminary
 21 injunction on it, right?
 22 MR. QUINLAN: It might be.
 23 THE COURT: Because it is going to go to the
 24 amount of the monies that are going to be held, right?

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1 MR. QUINLAN: Potentially. Again, I would have
 2 to see it and I will have to look at it. You know,
 3 obviously from my perspective, I don't know if we will
 4 even get there. But more importantly, I just don't
 5 like the idea that you know this 204, they brought the
 6 lawsuit. They don't want to produce witnesses, they
 7 don't want to do this, and then they want all this
 8 stuff (indiscernible). I am happy to look at it and
 9 if I think it is relevant, I am happy to give it to
 10 him. But I am not going to (indiscernible).
 11 MR. HOFFMAN: Your Honor, I am not asking --
 12 MR. QUINLAN: I am not without seeing the
 13 document to agree to turn something over that I am not
 14 sure that we have a fiduciary duty. I tried to work
 15 something out as colleagues should and he just wants
 16 it one-sided. There is just an element of fairness we
 17 all deal with (indiscernible).
 18 THE COURT: Right. But I know, but I am asking
 19 you right now, what is it that you feel like you need
 20 from him? What is it that you feel like you need?
 21 MR. QUINLAN: I said specifically, I got at the noose
 22 of the whole problem with taking no discovery in the
 23 case. What I would ask for any documents that they
 24 feel support their claims and really the ones I would

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1 be focusing on because I really think those are the
 2 two that matter the most, are they, you know, from a
 3 conceptual point of view, what do they believe?
 4 And I don't disagree with the Court, which is
 5 they are probably within us. But what are their back
 6 and forth that explains, that demonstrates their
 7 support for the questions that Mr. Hoffman is asking?
 8 And then he asked a lot of questions that
 9 (indiscernible).
 10 MR. HOFFMAN: All right. Your Honor --
 11 THE COURT: All right, you are --
 12 MR. QUINLAN: (Indiscernible) want to do that, to
 13 go into those questions with his witnesses when he
 14 calls them. And if he can produce documents that
 15 relate to their claims, that would be helpful. And
 16 then that would allow us to address them.
 17 Now, if he doesn't want to do that, that's fine.
 18 And Your Honor, you're asking me to like, you know,
 19 it's hard because I don't have a specific document. I
 20 haven't asked a single question to one of his
 21 witnesses. So, you know and to say if you have things
 22 to support -- they are trying to get (indiscernible).
 23 Trying to get an injunction.
 24 It's their burden. If they have documents and

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1 things that they believe support the complaint that
 2 they filed that justify the claims that they made, it
 3 seems to me they should produce them. If they want to
 4 ask the same of us, then I'm willing to do that to
 5 move this along because I strongly believe there is --
 6 THE COURT: Here is the difference as I see it.
 7 You're not asking for a specific document. You're
 8 saying, what are the documents that support your
 9 claim? I mean, there is --
 10 MR. QUINLAN: Well, that's (indiscernible).
 11 THE COURT: In his situation, you know, there's a
 12 document that Mr. Getty testified to that is in
 13 existence that he has access to. And I guess would
 14 clarify really, you know, the amount of money or at
 15 least the alleged amount of money that's been in
 16 question here, right?
 17 MR. QUINLAN: And I guess the frustrating part is
 18 we haven't asked a single question, obviously, in this
 19 hearing, not one. But when we do and I hear from a
 20 witness, did you have any communications about ABCD,
 21 and yes, I sent him an email. Okay, are we going to
 22 stop and say, will you produce that email because it
 23 may be essential to my case? I don't know. You know,
 24 obviously --

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1 THE COURT: I mean, I don't know.
 2 MR. QUINLAN: And I feel like we're just doing
 3 this well, hey, I want this, Judge, order this. I
 4 want that. I am willing to look at it, like I said,
 5 if it's helpful, Judge, I don't want to agree to
 6 produce without seeing it. I heard the testimony. I
 7 don't know what it is. If I did, I would turn it over
 8 to you and say, no problem, it helps me, I want to
 9 give it to you.
 10 I just want to take a look at it, and I don't
 11 want to be compelled to do anything without looking at
 12 it because I may turn around and say, no, I can't for
 13 thing, this and this reason. I just don't know. It's
 14 kind of unfair to me, (indiscernible).
 15 THE COURT: All right. Mr. Hoffman?
 16 MR. HOFFMAN: There is no unfairness. The
 17 witness just testified that he did an accounting of
 18 the money that he determined was owed to LT and then
 19 paid us four-and-a-half million out of it. This isn't
 20 some legal thing. This is his determination as an
 21 accountant. It's outrageous that it wasn't given to us
 22 already. And as to the fiduciary duty, yes, we're no
 23 longer a member of the district, but as long as the
 24 TTO is holding our money, it is a fiduciary toward

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1 those funds.
 2 Those are fiduciary funds. And that's what Esrig
 3 determined. And you bet your bottom dollar that Ken
 4 Getty is supposed to be giving us information about
 5 our money. And we asked for one document.
 6 MR. QUINLAN: I will tell you, Judge --
 7 MR. HOFFMAN: Excuse me. We asked for one
 8 document that the witness just testified about, and
 9 they won't --
 10 MR. QUINLAN: (Indiscernible).
 11 THE COURT: Mr. Quinlan, hold on.
 12 MR. HOFFMAN: One document that the witness
 13 testified about that is in existence. That's very
 14 relevant and important. And the fact that they won't
 15 agree to give this to us shows how uncooperative and
 16 difficult they are and how they are trying to make
 17 this into the most complex, contentious, difficult
 18 proceeding and it is really outrageous. Like from
 19 their fight over the Order to the transfer to Esrig,
 20 all of these things just build on each other. I am
 21 asking for one document. If they have a document that
 22 they really want from me, then ask me for it, but
 23 don't come up with this, well if you are going to ask
 24 for this, we are gg to give you this broad --

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1 MR. QUINLAN: I will tell you, Judge.
 2 MR. HOFFMAN: Excuse me. We are going to ask for
 3 all documents that support your position for this.
 4 That's nonsense. And that is not productive, and it
 5 is not geared toward finding facts. It is geared
 6 toward fighting with the other side and punishing us
 7 for filing this lawsuit. And it is improper. It is
 8 an improper purpose and again, it is a motion to
 9 require them to produce this one document. That's our
 10 motion.
 11 MR. QUINLAN: Is there a motion on file?
 12 MR. HOFFMAN: I just gave him an oral motion.
 13 THE COURT: All right.
 14 MR. QUINLAN: Okay. And it is one document, just
 15 so we are clear. And look, I am not trying to be
 16 hypothetical, but if Mr. Hoffman wants to profess some
 17 things about the law, it's a document that we
 18 specifically don't know, that Getty mentioned that
 19 we've got to figure out what it is and prove. I think
 20 (Indiscernible) would say if I talk to Mr. Getty, if I
 21 am allowed to. I know he's testifying and asked him
 22 what it is, I can give you a much better answer in
 23 about two minutes.
 24 But I will tell you one thing I would like that I

<p style="text-align: right;">Page 250</p> <p>1 think is going to be square at the center of this case 2 is why 204 waited so long to bring this lawsuit? And 3 when they're talking about it in July, what the basis 4 was for the delay, which I think is very relevant to 5 the four factors. And if they have something to 6 demonstrate that because I am going to ask them those 7 questions when we do get (indiscernible). 8 THE COURT: Yeah, I thought that the -- didn't 9 the money just get -- wasn't this -- wasn't the last 10 order in June? 11 MR. QUINLAN: It was July (indiscernible). 12 THE COURT: Everything went down in July. 13 MR. QUINLAN: July 2nd. So they waited all the 14 way for July 2nd, and obviously waited for August -- 15 THE COURT: Until September? 16 MR. QUINLAN: (Indiscernible). 17 MR. HOFFMAN: (Indiscernible). 18 MR. QUINLAN: And so the question is, if it's 19 truly an emergency, it's truly something you're 20 concerned about, and you are truly worried 21 (indiscernible). 22 THE COURT: Well, we are past an emergency. 23 There is no emergency motion pending. We are past an 24 emergency.</p>	<p style="text-align: right;">Page 252</p> <p>1 MR. QUINLAN: Okay, that's fair. 2 THE COURT: Okay. So let's do this, Mr. Getty 3 can you get Mr. Quinlan or Mr. Kaltenbach your 4 document that we're talking about, do you know what 5 document it is that we're talking about? 6 MR. GETTY: I do. 7 THE COURT: Okay. Can you get it to them by 8 tomorrow? 9 MR. GETTY: Yes. 10 THE COURT: All right. Good. Tomorrow is what 11 Friday, Thursday? I am lost. 12 MR. HOFFMAN: Thursday. Okay. So if you can get 13 it to him by tomorrow, by the end of business tomorrow 14 and he can review it, I will require that the parties 15 have a discussion about this by Monday, the 18th. 16 MR. QUINLAN: I can't do Monday because I am out 17 of town. 18 THE COURT: No, I am not telling you to come 19 back. You can have a discussion. 20 MR. QUINLAN: I am out of the country until 21 Monday. 22 MR. HOFFMAN: They have five lawyers on the case, 23 Your Honor, I can talk to one of them about this 24 document. It is not going to be that hard.</p>
<p style="text-align: right;">Page 251</p> <p>1 MR. QUINLAN: It gets to irreparable harm. 2 THE COURT: No, an emergency? 3 MR. QUINLAN: (Indiscernible) irreparable harm if 4 in fact they have sat on their hands, and they are 5 demonstrating that they are being harmed from July 6 until now. It is certainly a fact that the Court 7 would weigh as to whether or not they are truly being 8 irreparable. 9 MR. QUINLAN: (Indiscernible) irreparable harm if 10 in fact they have sat on their hands, and they are 11 demonstrating that they are being harmed from July 12 until now. It is certainly a fact that the Court 13 would weigh as to whether or not they are truly being 14 irreparable. 15 THE COURT: I don't know, there might be a 16 temporal component to that element, but I don't know 17 that it is necessary. 18 MR. QUINLAN: Well, I am not saying that any of 19 this is necessary. I am just trying to do what I can 20 to move this hearing. We have had one day of 21 hearings. 22 THE COURT: All right. Listen, Mr. Quinlan. I 23 want you to be able to look at the document before you 24 provide it. Okay.</p>	<p style="text-align: right;">Page 253</p> <p>1 THE COURT: All I am asking for is that you 2 discuss it with Mr. Hoffman. 3 MR. QUINLAN: I can do that on Tuesday. 4 THE COURT: All right, so discuss it by Monday. 5 MR. QUINLAN: Tuesday. Tuesday, Judge. 6 THE COURT: By Tuesday the 19th. 7 MR. QUINLAN: I am out of the country until 8 Monday. 9 THE COURT: Discuss it by Tuesday. And you know 10 I would like -- Mr. Quinlan, I think it would be 11 helpful if you think that this is a document that 12 should be turned over, that you turn it over. 13 MR. QUINLAN: Of course. 14 THE COURT: And I will ask the parties to -- you 15 know, I will allow if there's a refusal to turn it 16 over, Mr. Hoffman, I will let you file a motion on it 17 by, you know, a week later, by the 26th. 18 MR. QUINLAN: And Judge, I will tell you just 19 because we're on the record that hopefully I'll get it 20 sooner and if there is no issue, I will just turn it 21 over. 22 THE COURT: Good. I hope so. I hope this is all 23 unnecessary. 24 MR. QUINLAN: Yes, so my only trepidation as you</p>

<p style="text-align: right;">Page 254</p> <p>1 can imagine is that I haven't seen it.</p> <p>2 THE COURT: That's fine. That's fine. So, Mr.</p> <p>3 Hoffman, if you want, if you need to file a motion by</p> <p>4 the 26th, Mr. Quinlan and you're your team can file a</p> <p>5 response to it by the 29th. And then we'll address it</p> <p>6 when we come back. Mr. Hoffman, I am not going to</p> <p>7 give you time to reply, okay.</p> <p>8 MR. HOFFMAN: Don't need it. don't need it.</p> <p>9 THE COURT: And then we will address it on the --</p> <p>10 get me everything by the 1st, and we'll address it on</p> <p>11 the 5th. Okay? I think it would be helpful and I</p> <p>12 would like to see the parties, you know, working</p> <p>13 together, at least in this regard, okay.</p> <p>14 MR. HOFFMAN: I think this gives you an idea of</p> <p>15 what we're up against, but I'll do my best, Your</p> <p>16 Honor, I promise.</p> <p>17 THE COURT: Good. Okay, so that addresses that</p> <p>18 issue. Are you ready, Mr. Kaltenbach? Are you going</p> <p>19 to be questioning Mr. Getty?</p> <p>20 MR. KALTENBACH: I will, Your Honor, yes. Thank</p> <p>21 you.</p> <p>22 THE COURT: So why don't we get started. It is</p> <p>23 already twenty to five. Does anybody have a time</p> <p>24 deadline?</p>	<p style="text-align: right;">Page 256</p> <p>1 MR. QUINLAN: Judge, sorry to do this. Two</p> <p>2 things, I have to cut at like 5:20 because my daughter</p> <p>3 has a field hockey game, I guess I'm in charge of</p> <p>4 watching.</p> <p>5 THE COURT: You are in charge of watching; is</p> <p>6 that what you said?</p> <p>7 MR. QUINLAN: Yeah, I am in charge of watching.</p> <p>8 THE COURT: All right.</p> <p>9 MR. QUINLAN: From the family. And then on the</p> <p>10 other, I spoke to Mr. Getty (indiscernible) by the</p> <p>11 Court that at least from what he has informed me</p> <p>12 (indiscernible).</p> <p>13 THE COURT: Okay, good, good. So that sounds</p> <p>14 good. So Mr. Hoffman, you can get the document by</p> <p>15 Tuesday, okay?</p> <p>16 MR. QUINLAN: Okay. Do you want to put that in</p> <p>17 the Order and then we don't have to do that briefing</p> <p>18 schedule we talked about?</p> <p>19 MR. QUINLAN: Right.</p> <p>20 MR. HOFFMAN: Perfect. I couldn't hear what Mr.</p> <p>21 Quinlan was saying about today's scheduling.</p> <p>22 THE COURT: He has to leave at 5:20. He is in</p> <p>23 charge of watching his daughter's game.</p> <p>24 MR. HOFFMAN: Okay. Understood. So we will end</p>
<p style="text-align: right;">Page 255</p> <p>1 MR. QUINLAN: (Indiscernible)</p> <p>2 THE COURT: Can you get closer to the mic?</p> <p>3 MR. HOFFMAN: I can't hear him.</p> <p>4 MR. QUINLAN: I was just going to ask how long</p> <p>5 the Court was thinking of going so I can notify folks</p> <p>6 at home, that's all.</p> <p>7 THE COURT: Right. And I have the same</p> <p>8 situation.</p> <p>9 MR. QUINLAN: At the moment not taking a position</p> <p>10 on it, I just want to text them.</p> <p>11 THE COURT: Yeah, I mean, I can go late if I can</p> <p>12 just make sure that I have somebody to cover</p> <p>13 something. Do you want to give me one second and I</p> <p>14 can find out?</p> <p>15 MR. QUINLAN: Can I do the same?</p> <p>16 THE COURT: Yeah, of course. Three minutes and</p> <p>17 we will check in.</p> <p>18 (WHEREUPON, a short break was</p> <p>19 taken.)</p> <p>20 THE COURT: I am back.</p> <p>21 MR. HOFFMAN: Here, Your Honor, Jay Hoffman.</p> <p>22 THE COURT: I am good until 6:00.</p> <p>23 MR. HOFFMAN: So am I. Patrick, are you good?</p> <p>24 MR. REPORTER: Yes, I can stay until 6:00.</p>	<p style="text-align: right;">Page 257</p> <p>1 then?</p> <p>2 THE COURT: I am sorry?</p> <p>3 MR. HOFFMAN: Are we ending at 5:20?</p> <p>4 THE COURT: Yes, I think we are going to have to.</p> <p>5 MR. HOFFMAN: Okay.</p> <p>6 MR. QUINLAN: Thanks, Judge, sorry to be</p> <p>7 difficult.</p> <p>8 THE COURT: No, not at all. All right. I</p> <p>9 understand. Okay, so let's begin.</p> <p>10 MR. KALTENBACH: Sure.</p> <p>11 THE COURT: You are still under oath, you</p> <p>12 understand that.</p> <p>13 MR. GETTY: I do.</p> <p>14 THE COURT: Okay, all right.</p> <p>15 MR. KALTENBACH: Jay, did you use -- I am sorry,</p> <p>16 my notes are a little unclear. Is one of the exhibits</p> <p>17 the investment portfolio as of June 30, 2021, or no?</p> <p>18 MR. HOFFMAN: That is a document that is attached</p> <p>19 the TTO response to the motion for preliminary</p> <p>20 injunction.</p> <p>21 MR. KALTENBACH: If you marked it as an exhibit</p> <p>22 today, I would just use your exhibit; if you want to</p> <p>23 do it that way.</p> <p>24 MR. HOFFMAN: I did not use it.</p>

<p style="text-align: right;">Page 258</p> <p>1 MR. KALTENBACH: Okay. I will have to do it, 2 then. That's fine. I just wanted to know. 3 MR. HOFFMAN: I did not use it. I have no 4 objection to it being used as an exhibit in evidence. 5 No objection. 6 MR. KALTENBACH: Okay. I am going to have to, I 7 think, screen share. So if I can do that. I don't 8 know if Your Honor needs to do anything or if I can 9 just screen share. 10 THE COURT: You can do that, but I also have the 11 -- you said it is in the response, right? I have it 12 in front of me, but you want to share it with Mr. 13 Getty; is that what you are saying? 14 MR. KALTENBACH: Yes. 15 THE COURT: You should be able to. 16 MR. KALTENBACH: Okay, Your Honor, we will try to 17 do what we did for the trial in advance of the 5th, 18 which is have a master set of exhibits everyone can 19 have. We were just -- you know, it has been a rush to 20 get this done. Okay. I am going to share a screen. 21 Well, I will do it in a few minutes, I guess. Why 22 don't we do it that way. 23 CROSS-EXAMINATION 24 BY MR. KALTENBACH:</p>	<p style="text-align: right;">Page 260</p> <p>1 Q Okay. And the two \$3 million dollar amounts 2 that we have been talking about, I think one was a 3 Countryside and FNBC, LaGrange. Are those two 4 accounts are part of the agency fund? 5 A Correct. 6 Q Do those two accounts belong to any of the 7 school districts? 8 A No. 9 Q Okay. Do any of the accounts belong to any 10 of the school districts? 11 A No. 12 Q And the agency fund, in addition to bank 13 accounts, are there investment vehicles? 14 A Yes, there are. 15 Q And, roughly how many investment vehicles 16 are there, let's say, as of the end of the fiscal year 17 most recently ended, that would be June 30? 18 A Approximately 250. 19 Q Okay. I'll screen share now, if I may. 20 Okay, Mr. Getty, do you see this PDF that I'm kind of 21 wiggling on my screen? 22 A I do. 23 Q Okay. And what -- this is an 18-page PDF. 24 I am going to shrink it, I guess, a little bit. We</p>
<p style="text-align: right;">Page 259</p> <p>1 Q Mr. Getty, there has been some testimony 2 today about something called the agency fund. What 3 is, from your perspective as Treasurer, what is the 4 agency fund? 5 A The agency fund is all of the pooled 6 investments and cash accounts that are interest -- 7 predominantly produce interest on a quarterly basis 8 for the member districts. 9 Q Okay. And is that also what has been 10 referred to as the pool fund or the co-mingled fund? 11 A Correct. 12 Q Okay. And let's -- can you give me an idea 13 of the complexity; how many different bank accounts 14 are part of the agency fund? 15 A Well, approximately 50. 16 Q Okay. And whose name are all of those 17 accounts in? 18 A This signers on the account are the 19 Treasurer and the President of the Board, Mr. Michael 20 Theissen. 21 Q Okay. So all of that money, regardless of 22 what bank account (indiscernible) within the agency 23 fund, is that what your testimony is? 24 A Correct.</p>	<p style="text-align: right;">Page 261</p> <p>1 are just looking at the first page or so. What is 2 this document? 3 A This document lists all of the cash accounts 4 and all of the investment securities that are held by 5 the Treasurer's office within the agency fund. 6 Q Okay. And is this as of a certain point in 7 time? 8 A Correct. In the upper left hand corner, you 9 will see June 30, 2021. This would have been all of 10 the securities held on 6/30/2021. 11 Q Okay. And in the upper left, you see, 12 there's a chart above the pie chart. There's a chart, 13 one column has investment type and those are the 14 different types of investments, I am assuming; is that 15 right? 16 A Correct. 17 Q Okay. So we've got things like certificates 18 of deposit, money markets, U.S. Treasuries, municipal 19 bonds, things like that, right? Corporate bonds? 20 A Correct. 21 Q Okay. And then what is the cost basis 22 column, what does that (indiscernible)? 23 A That is the price that the Treasurer's 24 office paid for said security.</p>

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1 Q Okay. And what is the total market value?

2 A The market value as the value at the end of

3 June 30, which would have reflected if that security

4 that was held, it is essentially what it's valued in

5 the marketplace, according to our custodial bank.

6 Q Okay. But are those securities liquidated

7 on June 30th in order to then get the actual value?

8 A No.

9 Q Okay. And so the total value on June 30 on a

10 cost basis was, let's just say, roughly \$235 million;

11 is that accurate on how I am reading that?

12 A Correct. That is accurate.

13 Q Okay. And the total market value is \$240

14 million?

15 A Correct.

16 Q Okay. Now does -- are these funds that

17 belong to the school districts?

18 A Correct.

19 Q Okay. So the pool that we're talking about,

20 it's either, depending on how you look at it, it's

21 either \$235 million or \$240 million; that right?

22 A The Treasurer's office looks at cost basis.

23 Q Okay. So from your perspective, the pool as

24 of June 30th, was \$235 million dollars?

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1 A Correct.

2 Q Okay. Is this a document your office

3 created?

4 A It is.

5 Q Okay. When did your office create this

6 document?

7 A This would have been created in late July. I

8 know the Treasurer's office had a meeting on July

9 29th, so this would have been done the week before

10 July 29.

11 Q Is this a document -- why don't you create

12 this document earlier? For instance, at 5:00 p.m. on

13 June 30th or at 9:00 a.m. on July 1st?

14 A We don't have the information yet. Again,

15 it's about the -- between the 10th and the 12th of the

16 following month that we received information from our

17 custodial bank that is extremely important in the

18 creation of this report.

19 Q Does your office know to the penny the value

20 of the agency fund on a cost basis as of the moment

21 the fiscal year closes?

22 A No.

23 Q Is there any way you can fathom that your

24 office could calculate that as of the moment the

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1 fiscal year closes?

2 A No.

3 Q Okay. You have testified earlier today that

4 certain numbers are accurate or maybe you even said

5 perfectly accurate in hindsight? Do you recall that?

6 A Correct.

7 Q Can you explain what you meant by how is

8 something only accurate in hindsight?

9 A The word I used was precise, and so as part

10 of an accountant, in the accounting function is you

11 know, reconciling all the activity. And when I say

12 we're precise, we're precise once we're able to

13 reconcile a bank statement to our general ledger to

14 ensure that that information is correct.

15 Q And does the does the agency fund consist of

16 -- is it just these assets or does it -- is there

17 income that comes into the fund, or what is that?

18 A There's maturities, there's prepayments,

19 there are interest, the regular interest payments,

20 there are sometimes penalties. You know, that's just

21 some of it. You know, some of that, I'm sure I'm

22 missing.

23 Q How is there a penalty that occurs within

24 the agency fund?

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1 A You will see that there's an agency DUS or

2 /CMBS.

3 Q Is that the top line?

4 Q Yeah, the top line of the investment type.

5 That's a commercial mortgage backed security. And

6 also, you'll see, you know, about five rows down,

7 you'll MBS. Those are mortgage backed securities,

8 which are typically residential. If some of those

9 securities or some even some of the corporate bonds,

10 there are prepayment penalties that may be beneficial

11 to those entities, but we in no way can forecast if we

12 receive those types of funds until after month end.

13 Q Is that -- are you talking about someone

14 repaying a mortgage?

15 A Correct.

16 Q Okay. How often does the balance of the

17 agency fund fluctuate?

18 A Every day.

19 Q And do you track it daily?

20 A We do not.

21 Q Is that possible in your understanding?

22 A That would be impossible for our current set

23 up.

24 Q Okay. And so these next grouping of pages,

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1 so starting on page 2 of this exhibit, and I guess for
 2 identification, I think we'll call this Defendant's
 3 Exhibit 14, if we can. It's kind of kind of I guess
 4 how we did it internally.
 5 (WHEREUPON, Defendant's
 6 Exhibit 14 was marked for
 7 Identification.)
 8 BY MR. KALTENBACH:
 9 Q Is this then a listing of all the different
 10 investment vehicles within the fund?
 11 A Correct. This is every single investment
 12 within the agency fund.
 13 Q Okay. So we have the custody and we're
 14 seeing like Byline Bank and CIB Trust, the investment
 15 description, the maturity date, the type, CUSIP. And
 16 can you explain what CUSIP is, Mr. Getty?
 17 A A CUSIP is a digit that's assigned to
 18 securities so that they could be publicly tracked. If
 19 you take that number and there's a system called, you
 20 know, different systems that you could put that number
 21 in and you can essentially track that transaction.
 22 And some of them, you can see the buy and sell, the
 23 history of the different securities.
 24 Q Okay. So this document and I'm scrolling

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1 through it relatively rapidly because it looks like
 2 they're all kind of similar pages. These are all the
 3 different securities your office has invested the
 4 school districts' money in, right?
 5 A Correct.
 6 Q Okay. And is -- when your office creates
 7 this document, does it share it with the school?
 8 A I email it to the board members of all of
 9 our various school districts and superintendents, and
 10 then we also put it online on our website.
 11 Q Okay. And Mr. Getty, each -- I know there's
 12 a pie chart there. That's the pie chart of the types
 13 of investments that make up the agency fund, right?
 14 A Correct.
 15 Q Okay. Does each district own a share of the
 16 \$235 million dollar pool that you described?
 17 A Correct.
 18 Q Okay. Is that a percentage share, I guess,
 19 just to be clear?
 20 A Correct.
 21 Q Okay. So each district has a slice of the
 22 pie, if you will?
 23 A Correct.
 24 Q Okay. And is that how you track the balance

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1 that each district has within the agency fund?
 2 A Correct. Their fund balance gets applied
 3 against the total amount of cash and investments. And
 4 then we get the percentage share of their cash
 5 position of the agency funds.
 6 Q So is their fund balance just a percentage?
 7 It is a formula as a percentage of the agency fund; is
 8 that what you're saying?
 9 A Correct.
 10 Q Okay. And in order for you to know the
 11 percentages that this is going to be split, you know,
 12 let's imagine there's 12 districts, does each district
 13 get one-twelfth?
 14 A Correct.
 15 Q If so, does each district, do they each get
 16 an exact identical slice of the pie?
 17 A They do not.
 18 Q Okay. What determines each district's slice
 19 of the pie?
 20 A Their cash position, and I'm just making
 21 sure that fund balance, it is very close to fund
 22 balance. But it is the cash position of each
 23 district, and so again, very closely correlated to
 24 fund balance, but slightly different.

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1 Q Okay. And how do you determine the cash
 2 position in each district?
 3 A It's the fund balance with liabilities added
 4 to the fund balance and subtracting any cash accounts
 5 that may be reflected on that member district's
 6 general ledger. That is not held by the Treasurer's
 7 office, and therefore not part of this pooled
 8 investments.
 9 Q Okay. So let's break it down a little bit
 10 there. Each district has -- does each district have
 11 funds that are not part of the agency fund?
 12 A Yes, they do.
 13 Q Okay. And what are those funds, what are
 14 they for?
 15 A They could be student activity funds, so if
 16 the students go on a field trip and money comes in for
 17 that purpose. Districts have cash on hand. They call
 18 them imprest accounts. They act similarly to petty
 19 cash accounts if they needed to, you know, kind of
 20 check that day. And that's the majority of the
 21 accounts that held in the districts' name.
 22 Q And do you invest those funds for the
 23 districts?
 24 A We do not.

<p style="text-align: right;">Page 270</p> <p>1 Q Okay. And so that's why you back out those 2 amounts when determining the percentage of the pie, 3 because those amounts aren't part of the investment? 4 A Correct. At the end of the year when the 5 ownership is created. 6 Q Okay. So what do you need to know in order 7 to know the cash balance in order to determine each 8 district slice of the \$235 million dollar pie? 9 A We need to have all of our districts, all of 10 our districts, closed for June. In this case, all 11 activity has to be completed for June, and the member 12 districts signing off that their books are closed. 13 And then, you know, we need to reconcile all the 14 underlying bank accounts. We reconcile all the 15 transactions for the portfolio, in general. And after 16 we have that information, we're able to create that 17 percentage share. 18 Q Okay. And how long does that take to 19 calculate the percentage share, you know, from the day 20 the fiscal year ends until you're able to do it? 21 A A typical month-end then can take anywhere 22 from 20 to 40 days to have all of our member districts 23 closed. Year-end becomes significantly more difficult 24 just because it is the end of year. And so typically,</p>	<p style="text-align: right;">Page 272</p> <p>1 THE COURT: It is leading. There has been some 2 leading. Yes, go ahead and rephrase. 3 MR. KALTENBACH: There probably has, Your Honor. 4 I will concede that. I was trying to -- some of this 5 is background and I was trying to expedite it; that's 6 fair. 7 BY MR. KALTENBACH: 8 Q Okay. So, Mr. Getty, is there -- you know, 9 do you and does your office try your best to get each 10 district's slice of the pie determined and the pie 11 determine as quickly as you can? 12 A Correct. 13 Q Okay. So that late September day is not a 14 date you just arbitrarily pick. Is that accurate, or 15 no? 16 A That's accurate. 17 Q And the numbers that you are using, the \$235 18 million pool, is that subject to independent audit? 19 A It is. 20 Q And is your calculation of the slice of each 21 district's pie subject to independent audit? 22 A It is. 23 Q Okay. Do the districts enroll in your -- or 24 do the district's records play any role in calculating</p>
<p style="text-align: right;">Page 271</p> <p>1 it's not until the middle of August. So typically, I 2 would say between August 15th and August 25th is when 3 all activity has been completed for the prior fiscal 4 year, and we're able to start the process of turning 5 over the information to our auditors to double check. 6 But once our auditors sign off, it is typically 7 between the 20th and the 30th of September that we get 8 the information back from our auditors, that our 9 information correlates to the information that they're 10 in the process of auditing. So there are two dates. 11 Q And at that moment, so late September, let's 12 just say, at that moment, you know, number one, the 13 pool, right? You know, the cash basis in the pool as 14 of that moment, correct? 15 A Correct. 16 Q And, you know, each district's percentage as 17 of that moment? 18 A Correct. 19 Q And until that period in late September, you 20 don't know what each district's ownership slice of 21 that \$235 million pie is; is that right? 22 MR. HOFFMAN Objection. I have been trying not 23 to object on leading, but this is just getting to be 24 too much. Objection, leading.</p>	<p style="text-align: right;">Page 273</p> <p>1 -- 2 A You broke up. I missed a portion of what 3 you said in the beginning. 4 Q I apologize. The internet is in here, as it 5 turns out, is a little unstable. I've gotten a couple 6 warnings. Do the districts themselves work with your 7 office to determine the slice of the pie? Do they 8 have a say in that? 9 A No. 10 Q Okay. Do any of the districts maintain 11 their own books and records? 12 A Yes. 13 Q Okay. And does this -- 14 MR. KALTENBACH: I'm sorry did I freeze up? 15 THE COURT: Yes. 16 MR. KALTENBACH: I apologize. 17 THE COURT: That's all right. Go ahead and 18 restate your question. 19 BY MR. KALTENBACH: 20 Q Mr. Getty, does District 204 maintain, aside 21 from books and records your office maintains for them, 22 do they maintain their own books and records? 23 A Yes. 24 Q Okay. And when you're calculating District</p>

<p style="text-align: right;">Page 274</p> <p>1 204's cash balance, do you rely at on District 204, or 2 any of its books and records? 3 A We do not rely on their books and records. 4 Q Is there any communication with District 204 5 about the calculation of their cash balance? 6 A Yeah, I mean, there's always monthly 7 reconciliation items with all of our member districts, 8 including 204. 9 Q Mr. Getty, do you recall Mr. Hoffman, you 10 know, I don't think I will pull it up, showed you a 11 statutory section that said something about having a 12 reasonable period of time not to exceed 90 days to 13 liquidate? I can't remember the exact phrasing, 14 pooled investments, to liquidate any pooled 15 investments? 16 A I remember. 17 Q Okay. And Mr. Getty, obviously I will not 18 ask you for your legal opinion, but what does 19 liquidate to you mean in that context? 20 A It is determining the TTO's ownership 21 percentage for all of our member districts to know 22 what the precise amount due to District 204. 23 Q Okay. Let me ask you this, Mr. Getty. If 24 on the morning of July 1st that \$235 million was pure</p>	<p style="text-align: right;">Page 276</p> <p>1 MR. KALTENBACH: Yes, it goes to a irreparable 2 harm, Your Honor. I apologize, there -- I just feel 3 there is some background that I need to get into a 4 little bit. 5 BY THE WITNESS: 6 A I am sorry. Can you restate the question? 7 Q Sure. Is it possible -- you said you needed 8 to determine, I believe, all of the districts' 9 percentages? Could you just determine 204's 10 percentage, or do you need to determine all of the 11 districts' percentages? 12 A I would need to do all the districts. 13 Q And why is that? 14 A Because I need to understand the total size 15 of the pie before I can assign shares of the pie. 16 Q Okay. Mr. Getty, do you recall looking at 17 the 50-some page Order that Judge Esrig entered, you 18 know, earlier this year? 19 A I do. 20 Q Okay. I don't think I need to pull it up on 21 the screen, this was attached as Exhibit A to 204's 22 Verified Complaint. I guess maybe if we can all look 23 at that, that would be that would be the easiest. Do 24 you still have that handy, Mr. Getty?</p>
<p style="text-align: right;">Page 275</p> <p>1 cash sitting in a checking account, would that be 2 considered in your mind, a liquid asset? 3 A It would be a liquid asset, yes. 4 Q Okay. Would that mean that you were able to 5 liquidate 204's share of that asset on July 1st? 6 A No, I would not be able to. 7 Q And can you explain why you would not be 8 able to? 9 A Because I don't know what the total 10 ownership percentage of that \$235 million would be due 11 to them because I need all of the member districts' 12 financials to be completed to understand what 13 everyone's ownership percentages is of that asset. 14 Q Would it be good enough just to calculate to 15 204's percentage and kind of then lump everyone else 16 in "another", so to speak? 17 THE COURT: Is this going to -- is this going to 18 issues involved in the motion to dismiss? Or is this 19 going the issues involved in the motion for a 20 temporary restraining order? 21 MR. KALTENBACH: Temporary -- a preliminary 22 injunction, Your Honor. 23 THE COURT: I'm sorry, you're right. A 24 preliminary injunction.</p>	<p style="text-align: right;">Page 277</p> <p>1 A I do. 2 Q Okay. So can you just go ahead and open to 3 that first page of that Order, please. And I'm not 4 going to walk through this exhaustively by any 5 stretch. 6 A Okay. I am on page 21 of the PDF. 7 Q Yeah, well, I trust you it is page 21, okay. 8 Do you remember Mr. Hoffman asked you about the last 9 sentence of the first paragraph under the heading of 10 "background"? It starts with -- well, it says: the 11 TTO's function is to receive, hold, manage, invest, 12 and account for tax funds collected on behalf of the 13 TTO's member districts; do you recall that? 14 A I do. 15 Q Okay. And do you understand that implicit 16 in that is an obligation to do so, accurately? 17 A I do. 18 Q And if you or a prior treasurer was 19 inaccurate in receiving, holding, managing, investing 20 your accounting, would you feel an obligation to 21 correct your records? 22 A I would. 23 Q Okay. So when you determined 204's -- you 24 determined 204's slice of the pie in connection with</p>

<p style="text-align: right;">Page 278</p> <p>1 their withdrawal from the Township Treasurer's Office, 2 is that right? 3 A Correct. 4 Q Okay. And your understanding of the law, 5 whether it's right or wrong, your understanding was 6 you had a reasonable period of time up to 90 days; was 7 that your testimony earlier? 8 A Correct. 9 Q And have you ever unwound any other member 10 districts from the purview of the Treasurer's office 11 and what's called the TTO? 12 A I have. 13 Q Okay. What other districts have you 14 unwound? 15 A At the end of Fiscal Year 2019, there was a 16 medical and life insurance cooperative, a self-insured 17 pool and a dental cooperative self-insured pool that 18 ceased to exist, which in turn eliminated their 19 membership in the TTO. And I facilitated that 20 liquidation and run out. 21 Q Okay. And did you complete that in 90 days? 22 A No. 23 Q How long did it take you to liquidate and 24 run out, to use your phrase, each of those two</p>	<p style="text-align: right;">Page 280</p> <p>1 A I would. 2 Q And I understand that you might seek legal 3 counsel just to make sure of something, but would you 4 correct that mistake if left to your own devices and 5 no one told you it illegal, let's say? 6 A Yes, I would. 7 Q Okay. So if District 204 sat down and 8 convinced you that you had made a mistake and that you 9 had wrongfully calculated their slice of the pie on 10 the way out the door, you would feel an obligation to 11 correct that; is that accurate? 12 A Correct. That's accurate. 13 Q And you would correct that? 14 A Correct. 15 Q And so if you corrected that, that means 16 they walked out the door with less slice of a pie than 17 they should have had; is that right? 18 MR. HOFFMAN: Objection. This is just an 19 incomplete hypothetical scenario. I'm not sure what 20 we're really talking about here, or its relevance? 21 THE COURT: If he felt like there was a mistake, 22 he would have corrected it. 23 MR. HOFFMAN: All right. 24 THE COURT: And what was the next question?</p>
<p style="text-align: right;">Page 279</p> <p>1 districts? 2 A For those entities, it took two complete 3 fiscal years to complete the process. But it was 4 originally granted 15 months, is what was expected of 5 the run out and reconciliation period. And it 6 actually took 18 months, and then we waited for 7 additional activity. But it seemed like 18 months was 8 the actual amount of time that activity kept being 9 applied to the accounts. 10 Q And in connection with that liquidation and 11 run out, did they also have a slice of the pie? 12 A They did, previously. 13 Q Okay. And had you calculated their slice of 14 the pie in connection with the run out and 15 liquidation? 16 A Not after Fiscal Year 2019. 17 Q Okay. But it had been calculated before 18 Fiscal Year 2019? 19 A Correct. 20 Q Mr. Getty, if you determined that you made a 21 mistake in calculating, you know, the liquidation and 22 a run out or the slice of the pie, whether for those 23 districts or for District 204, would you feel an 24 obligation to correct that mistake?</p>	<p style="text-align: right;">Page 281</p> <p>1 MR. HOFFMAN: And if we convinced him we made a 2 mistake, he would -- and he agreed with us, we would 3 correct it. and then it just kept going on into 4 another hypothetical. 5 MR. KALTENBACH: Let me just ask a new question, 6 then. 7 BY MR. KALTENBACK: 8 Q How would you correct that mistake, Mr. 9 Getty? 10 A With a journal entry. 11 Q Okay. And would that mean that the 12 district, whether it's 204 or one of these co-ops or 13 whoever, would then get more money? 14 A Correct. 15 Q Okay. And that money would come from the 16 agency fund, right? 17 A Correct. 18 Q Because you would have determined that the 19 slice of the pie, the (indiscernible) and accurately 20 compute it? 21 MR. HOFFMAN: Objection. We are leading again, 22 here. 23 THE COURT: Rephrase the question. 24 BY MR. KALTENBACH:</p>

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1 Q If you determine that a district's slice of
 2 the agency fund PIE was incorrect on the way out the
 3 door, would that mean that they walked out the door
 4 with less money than they should have walked out with?
 5 A I'm sorry, can you say it again?
 6 Q Yeah. I apologize. Let's imagine that you
 7 have calculated that the district's percentage of the
 8 pie was, you know, 22 percent. And then you realized
 9 later it should have been 23 percent. So I think you
 10 testified you would fix that with the journal entry,
 11 correct?
 12 A Correct.
 13 Q And then would you give that one percent
 14 extra to the district?
 15 A Correct.
 16 Q Okay. And let's assume you don't believe
 17 that you made a mistake, but let's assume that a Court
 18 entered an order that determined that your calculation
 19 of the slice of the pie of a district on the way out
 20 the door was wrong. So you don't determine that, but
 21 respectfully, maybe a judge says, Mr. Getty, nice try,
 22 but you were just wrong. Would you feel an obligation
 23 then, and again, not asking what -- your lawyers might
 24 tell you something, but would you feel an obligation

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1 to correct that, personally?
 2 A I would.
 3 Q Okay. And would you correct that if ordered
 4 to do so by a Court?
 5 A Yes.
 6 Q And could you correct that?
 7 A Yes.
 8 Q Okay. So if this Court were determined that
 9 District 204's slice of the pie that they received on
 10 their way out the door was too low, and it should have
 11 been a bigger piece of the pie, do you have the
 12 ability to give them any bigger piece of the pie to
 13 this day?
 14 A I do.
 15 Q You know, I'm sorry, this might have been
 16 separately, marked. We can just do it this way. It
 17 is an exhibit. So let's look at Exhibit F to the
 18 amended -- I'm sorry to the Verified Complaint that
 19 District 204 had filed.
 20 THE COURT: Say it again, I'm sorry,
 21 MR. KALTENBACH: I'm sorry, Your Honor, Exhibit
 22 F.
 23 BY MR. KALENBACH:
 24 Q So, Mr. Getty, Exhibit F is at least the

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1 page it's on, this is an email that you sent to Brian
 2 Stachacz?
 3 A Correct.
 4 Q Okay. And who is Mr. Stachacz?
 5 A He is the business manager at Lyons Township
 6 High School.
 7 Q Okay. And this is copied to Mr. Theissen,
 8 Miss Kriksey-Miller, and is that the Board of
 9 Education at Lyons Township, is that like a mass e-
 10 mail address?
 11 A Correct.
 12 Q Okay. And you sent this on June 28th of
 13 2021?
 14 A Correct.
 15 Q Okay. And if we go to the next page, there
 16 is like a chart and then there's a bunch of paragraphs
 17 and there's another chart that like needs filled out.
 18 And above that there's a full paragraph that starts
 19 with "a soft close of the", do you see that, sir?
 20 A I do.
 21 Q Okay. And did you write that language?
 22 A I did.
 23 Q Okay. What is a soft close? What did you
 24 mean there?

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1 A So typically between Lyons Township High
 2 School and the Treasurer's Office, we typically have a
 3 soft close every fiscal year. (Indiscernible) tell
 4 each other's general ledgers to make sure all the
 5 active (indiscernible) language that had been used
 6 before as part of the close of the fiscal year.
 7 THE COURT: Are you having trouble, Mr.
 8 MacPherson?
 9 MR. REPORTER: Yeah, part Mr. Gettys statement
 10 cut out there in the middle.
 11 MR. KALTENBACH: Should I just ask the question
 12 again?
 13 THE COURT: Yeah, yeah.
 14 BY MR. KALENBACH:
 15 Q We might have too many people on lifeline
 16 here. Mr. Getty, what does a soft clothes mean to you
 17 as the Treasurer?
 18 A So a soft close means we don't close the
 19 door fully on the month-end. We tend to run our end-
 20 of-month financial reports knowing that they are not
 21 complete or not reconciled. And that's what that
 22 distinction typically means with soft close.
 23 Q Okay. And then later on, so you say a
 24 source close of the Lions Township Trustees and

<p style="text-align: right;">Page 286</p> <p>1 Schools general ledger will be performed, and a 2 forecasted ending, LTHS, I think we all agree that's 3 the high school, fund balance will be communicated 4 with the LTHS Business Office the afternoon of 6/30. 5 And what did you mean when you said a forecasted 6 ending of the balance? 7 A It was forecasted. It was what we believed 8 at that period of time what it was with the full 9 understanding, that it was most likely going to 10 change. 11 Q Okay. And when you say what it was, are you 12 referring to their slice of the pie? 13 A No, really just the general ledger position 14 on 6/30. 15 Q Okay. Let's look at the next exhibit in Mr. 16 Hoffman's Complaint, Exhibit G, I think it is probably 17 going to be two pages down for those of us who are not 18 flipping and scrolling instead. 19 And this is an email that you sent to Mr. 20 Stachacz, and there's some CCs on it, on the afternoon 21 of June 30th, right? 22 A Correct. 23 Q Okay. And at 4:59 p.m. So a minute before 24 what most people consider the business day ends,</p>	<p style="text-align: right;">Page 288</p> <p>1 determined at 4:59 p.m. on June 30th that that was the 2 amount of money that the high school should walk out 3 the door with? 4 A No. 5 Q Okay. What else did you need? What would 6 affect that calculation? Why wouldn't it be that 7 amount? 8 A Well, I need to know all the other member 9 districts. I need everyone, I need a hard close for 10 all 13 member districts to know the exact dollar 11 amount that LTHS's needs walking out the door. 12 Q And you also need to know the pool, correct 13 That is the total amount of the pool? 14 A Correct. 15 Q Okay. So you were forecasting \$47 million, 16 right, and change? 17 A Yes. 18 Q And you have three bullet points under that. 19 We will start with the third one. You transmitted 20 \$41,731,790.72 to the high school, correct? 21 A Correct. 22 Q Correct. And when did you send that money 23 to the high school? 24 A That was the morning of July 1st.</p>
<p style="text-align: right;">Page 287</p> <p>1 right? 2 A Correct. 3 Q Okay. A about halfway down, you say a soft 4 close has been attached and the forecasted balance, 5 right? And did you attach a soft close to your 6 email, even if it's not here? 7 A I believe I did. I don't know why I would 8 reference it, if I didn't. 9 Q Okay. If you didn't, you would have 10 expected someone to say, hey, you didn't attach it, 11 and can you send it to me? 12 A Yes. 13 Q Okay. And you say that the forecasted -- 14 and soft close meant the same thing you just said a 15 minute ago, right? 16 A Correct. 17 Q Okay. And a forecasted -- is that Fiscal 18 Year 2021 ending Lyons Township High School fund 19 balance is \$47,731,790.72, right? 20 A Correct. 21 Q Okay. And you called that a forecast again, 22 right? 23 A Right. 24 Q Does that mean that your office is</p>	<p style="text-align: right;">Page 289</p> <p>1 Q Okay, so the first the -- following day, but 2 the first day of the next fiscal year; is that right? 3 A Yeah, that is correct. 4 Q Okay. And then you have the two above 5 bullet points, with that you held back \$3 million 6 dollars, twice. And you put each of that in an 7 interest-bearing account at two different banks within 8 Lyons Township, I believe. Is that right? 9 A Correct. 10 Q Okay. Does that mean you had determined as 11 of the time you sent this email that they, in fact 12 would be getting that \$6 million dollars? 13 A No. 14 Q Okay. (Indiscernible) and Mr. Waterman, I 15 see (indiscernible). Copied on this, as well as the 16 Board. Did anyone at Lyons Township ask what you 17 meant by a soft close? 18 A No. 19 Q Did anyone ask what you meant by forecasted? 20 A No. 21 Q So just so we're clear, Mr. Getty, your 22 office did not determine that Lyons Township High 23 School, you knew they were owed money, but you would 24 not determine how much money, at this point in time,</p>

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1 right?

2 A Correct.

3 Q And when did you -- when did the Treasurer,

4 you know, know what that final balance was?

5 A On September 23, 2021, when I received what

6 we call the district audit communication from -- back

7 from our auditors.

8 Q So has the audit been complete for your

9 office, sir?

10 A It is not, it's in the technical review.

11 It's in the final parts of finalization.

12 Q Okay. And are all the audits once finished,

13 are they posted online?

14 A Correct.

15 Q Okay. So are the numbers that you finally

16 gave the high school, are those based on audited

17 numbers?

18 A Yes.

19 Q Okay. Let me, I think, Your Honor, can I

20 screen share a document again, please?

21 THE COURT: Sure.

22 MR. KALTENBACH: Okay, great. Thank you.

23 THE COURT: We are running past 5:20, is Mr.

24 Quinlan still in the room?

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1 MRQ: I am here. I am packing up.

2 MR. KALTENBACH: Your Honor, can I go five more

3 minutes?

4 THE COURT: Yes.

5 BY MR. KALTENBACH:

6 Q Mr. Getty, this is, and I don't know if this

7 is marked previously. I think it was, actually. This

8 is an email chain from -- well, I kind of redacted

9 some stuff at the top, obviously. This is an email

10 chain, correct?

11 A Correct.

12 Q Okay. And so, you know, we read email

13 chains bottom up. So is this email that we're looking

14 at now, and for identification, we will mark this as

15 Exhibit 3.

16 MR. KALTENBACH: I think, Jay, you admitted this,

17 I think, right?

18 MR. HOFFMAN: This is already in evidence.

19 MR. KALTENBACH: Okay, great, thank you. Just

20 for my reference, it is here.

21 BY MR. KALTENBACH:

22 Q And so you sent this email to Dr. Waterman

23 on September 28th at 11:51 a.m.; is that accurate?

24 A Correct.

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1 Q Okay. And you stated that it was your

2 intent to transfer to the high school the sum of

3 \$4,564,087.00 from the agency fund, right?

4 A Correct.

5 Q Okay. And you said although they'll be

6 transferred from the agency fund to comply with, you

7 know, what was then what we told the Court last

8 Thursday, they are not going to come from the two

9 accounts that each of the \$3 million is in, right?

10 A Correct.

11 Q Okay. So where did the money come from?

12 A It came from another bank account held

13 within the agency fund.

14 Q Okay. So that listing we had looked at of

15 roughly 250 different investment vehicles, it came

16 from one of those accounts?

17 A Correct.

18 Q Okay. And each district owns an ownership

19 of the -- the percentage ownership pie piece of the

20 agency fund, right?

21 A Correct.

22 Q Okay. In your mind, from your point of

23 view, did District 204 own the \$6 million dollars that

24 had been placed in either of those two accounts?

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1 A I'm sorry, can you say it again, you broke

2 up.

3 Q Yeah, I apologize, again. In your mind, the

4 fact that you would put \$3 million into each of those

5 two accounts, did that mean to you that District 204

6 owned that fund or those funds?

7 A No.

8 Q Okay. So you gave them the money that you

9 thought they were owed just from elsewhere in the

10 agency fund; is that what happened?

11 A Correct.

12 Q Okay. And Dr Waterman responded to you a

13 couple hours later, right?

14 A Correct.

15 Q Okay. And in his first point, he said to

16 you it is important that LT receive as much of its

17 funds as possible and as soon as possible. So LT is

18 happy to accept the transfer of \$4.5 million of its

19 funds into its controlled account and BMO Harris, N.A.

20 regardless of the source (indiscernible). That's what

21 Dr. Waterman said to you, right?

22 A Correct.

23 Q Did Dr. Waterman express to you whether in a

24 different email or on the phone or anything like that,

<p style="text-align: right;">Page 294</p> <p>1 any concern that this was coming from the agency fund 2 without knowing the specific source? 3 A No. 4 Q Okay. And just so we're clear, I guess, who 5 is Brian Waterman, Dr. Waterman? 6 A I'm sorry, I didn't hear that. 7 Q I'm sorry. Who is Dr. Waterman? Just so we 8 have a record of that in case it is not out there. 9 A He is the Superintendent of Lyons Township 10 High School, effective July 1, 2021. 11 Q Okay. And you copied Mr. Stachacz, and I 12 think you earlier, he is the business manager of the 13 high school? 14 A Correct. 15 Q Is he -- does Lyons Township High School, 16 have its own Treasurer by this point in time, 17 September of 2021? 18 A Correct, that would be Mr. Stachacz. 19 Q Okay. So this is sent to the Treasurer. 20 Did Mr. Stachacz express any concern to you that you 21 were giving him four-and-a-half million dollars in the 22 agency fund? 23 A No. 24 Q Did anyone from the high school expressed</p>	<p style="text-align: right;">Page 296</p> <p>1 MR. GETTY: I'll run to the restroom really 2 quick. 3 MR. KALTENBACH: If Mr. Getty can be excused? 4 THE COURT: Sure, of course. Can you take the 5 document off the screen? 6 MR. KALTENBACH: Yes. I will get the document 7 within the next day or so from Mr. Getty. Mr. Quinlan 8 and I will look at it, as he said, just so we're 9 clear. We will get that to Mr. Hoffman no later than 10 next Tuesday. 11 THE COURT: Great, okay. All right. So who wants 12 to do an Order for today? 13 MR. HOFFMAN: I will write the Order. 14 THE COURT: All right, Mr. Hoffman, so you'll say 15 that you'll expect to receive that -- identify the 16 document, you will receive it by whatever, end of 17 business on Friday; does that make sense? 18 MR. KALTENBACH: Yeah, I think we can do Friday, 19 right? 20 THE COURT: You will receive the document by end 21 of business, Friday. Identify specifically what the 22 document is, so that we don't have to fight about that 23 later. And then we'll continue with our hearing. 24 THE CLERK: November 5th at 10:00 a.m.</p>
<p style="text-align: right;">Page 295</p> <p>1 any concern to you that you were giving them money 2 from the agency fund without knowing the specific 3 source of those funds? 4 A No. 5 Q Did any of them ask you if the other 6 districts consented wiring this money to Lyons 7 Township School? 8 A No. 9 Q Okay. And then the next email, you are 10 confirming. Is this just confirming that the wire was 11 made? 12 A Correct. 13 Q Okay. And when I said did any of these 14 individuals express any concern to you, I don't just 15 mean at that exact moment, have they subsequently 16 expressed any concern to you that this came from the 17 agency fund, you know, and that they don't know if the 18 other districts consented to that, or they didn't 19 funds? 20 A No. 21 MR. KALTENBACH: This office, because I can't 22 lock it up. I think we are at a pretty good stopping 23 point, it's 5:28. Are we going to call it a day? 24 THE COURT: Yeah.</p>	<p style="text-align: right;">Page 297</p> <p>1 MR. HOFFMAN: I will put in the Order that we're 2 continuing, and I'll have the Zoom information as 3 always. 4 THE COURT: Yes. 5 MR. HOFFMAN: I'll put in the ruling on the 6 motion to transfer. I will put in the ruling on the 7 motion to strike the Order with the language that the 8 Court gave and I will enter -- 9 THE COURT: Motion to strike the Order. What are 10 we talking about? 11 MR. HOFFMAN: (Indiscernible). 12 MR. KALTENBACH: (Indiscernible). 13 MR. HOFFMAN: Hubbub about the agreed Order, so 14 the motion to strike. We got a ruling, a motion 15 strike, the agreed Order is denied, but you are going 16 to remove word "agreed" from the Order. 17 THE COURT: Right. 18 MR. HOFFMAN: Add in the clarifying language. 19 THE COURT: Right. 20 MR. HOFFMAN: I think we agreed to enter and 21 continue the motion to dismiss -- 22 MR. KALTENBACH: Well, should we start a briefing 23 schedule on that, I guess what I'm wondering? 24 THE COURT: I mean, you filed it. You filed it,</p>

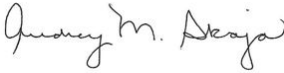
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1 when? Yesterday?
 2 MR. KALTENBACH: Yeah, again, Your Honor, we
 3 weren't trying to sandbag anyone.
 4 THE COURT: Did you notice it for presentment or
 5 no?
 6 MR. KALTENBACH: It was technically, I think,
 7 piggybacked at 10:00 a.m. this morning. So obviously,
 8 we didn't expect the Court to take (indiscernible)
 9 this morning.
 10 THE COURT: I guess, I mean, it's going to have
 11 to be briefed one way or another, right, Mr. Hoffman?
 12 MR. HOFFMAN: Yeah, here is what I'd like.
 13 Because we're in the middle of this hearing, I don't
 14 want -- I have things to do related to that, and then
 15 other issues. I'd like to just enter and continue the
 16 motion to dismiss until our next court hearing.
 17 And at that point, we can take up a briefing
 18 schedule. Because I don't -- I particularly don't
 19 want that to distract from what we're doing at the
 20 hearing. And I would note, as I already told the
 21 Court on September 23rd, I'm going to be out of the
 22 state for 10 days in the next couple of weeks. So I'm
 23 taking it a long, deserved vacation.
 24 THE COURT: good. All right, good. Here's what

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1 I wonder, okay. And I don't know if you want to be on
 2 the record or off the record. Do we need to be on?
 3 MR. HOFFMAN: We do not.
 4 THE COURT: We can go off.
 5 (WHICH WERE ALL THE PROCEEDINGS HAD.)
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 2 CERTIFICATE OF TRANSCRIPTIONIST
 3
 4 I CERTIFY THAT THE DEPOSITION OF FOREGOING
 5 TRANSCRIPT OF SAID DEPOSITION IS A TRUE, CORRECT, AND
 6 COMPLETE TRANSCRIPT OF THE STATEMENT GIVEN AT THE TIME
 7 AND PLACE SPECIFIED.
 8
 9 I FURTHER CERTIFY THAT I AM NOT A RELATIVE OR
 10 EMPLOYEE OR ATTORNEY OR EMPLOYEE OF SUCH ATTORNEY OR
 11 COUNSEL, OR FINANCIALLY INTERESTED DIRECTLY OR
 12 INDIRECTLY IN THIS ACTION.
 13
 14 IN WITNESS WHEREOF, I HAVE SET MY HAND:
 15
 16 
 17 _____
 18 Audrey M. Skaja
 19 Thompson Court Reporters, Inc.
 20
 21
 22
 23
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1
 CASE NAME: _____
 DEPOSITION OF: _____
 DATE TAKEN: _____
 TAKEN BEFORE: _____
 THIS IS TO CERTIFY THAT I HAVE READ THE
 TRANSCRIPT OF MY DEPOSITION TAKEN IN THE ABOVE-ENTITLED
 CAUSE AND THAT THE FOREGOING TRANSCRIPT ACURATELY STATES
 THE QUESTIONS ASKED AND THE ANSWERS GIVEN BY ME AS THEY NOW
 APPEAR.

 SUBSCRIBED AND SWORN TO
 BEFORE ME THIS ____ DAY
 OF _____, 2021.

 NOTARY PUBLIC