

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

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

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendants.

Case No. 13 CH 23386

Hon. Sophia H. Hall

FILED - CH  
CLERK OF THE CIRCUIT COURT  
CHANCERY DIVISION  
2014 AUG 12 PM 3:16  
DOROTHY BROWN  
CLERK

NOTICE OF FILING

TO: Gerald E. Kubasiak  
Douglas G. Hewitt  
Kubasiak Fylstra Thorpe & Rotunno, PC  
Two First National Plaza, 29<sup>th</sup> Floor  
20 South Clark Street  
Chicago, IL 60603  
Fax: 312-630-7939

PLEASE TAKE NOTICE that on **August 12, 2014**, we filed with the Clerk of the Circuit Court of Cook County, Chancery Division, defendant's **Motion to Reconsider Order of June 18, 2014**, a copy of which is served upon you.

**Name:** Charles A. LeMoine  
Rosa A. Tumialán  
Stephen M. Mahieu  
Dykema Gossett PLLC

**Address:** 10 South Wacker Drive  
**Telephone:** (312) 876-1700  
**Attorney for:** Defendant  
**City:** Chicago, Illinois 60606

**PROOF OF SERVICE**

The undersigned, a non-attorney, states on oath that she served a copy of the foregoing Notice of Filing and Motion to Reconsider Order of June 18, 2014 to the above counsel of record at the above mailing address by depositing a copy of same in the U.S. mail at 10 South Wacker Drive, Chicago, Illinois 60606 before 5:00 p.m. on August 12, 2014.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109 I certify that the statements set forth herein are true and correct.

  
\_\_\_\_\_

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

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

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DISTRICT  
204,

Defendants.

No. 13 CH 23386

Hon. Sophia H. Hall

FILED - CH  
CLERK OF THE CIRCUIT COURT  
CHANCERY DIVISION  
2014 AUG 12 PM 3:17  
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**MOTION TO RECONSIDER ORDER OF JUNE 18, 2014**

Defendant, Lyons Township High School District 204 (“District 204”), respectfully moves this Court to reconsider its order of June 18, 2014, denying District 204’s motion to dismiss, and states as follows in support:

**INTRODUCTION**

District 204 moved to dismiss the “Verified Complaint for Declaratory Relief” (the “Complaint”) filed by plaintiff, Township Trustees of Schools, Township 38 North, Range 12 East (“Plaintiff”), on January 31, 2014. The parties briefed that motion and subsequently participated in oral argument before the Court on April 29, 2014. A copy of the transcript of that argument is attached as **Exhibit A**. The Court issued its oral ruling denying the motion to dismiss without prejudice on June 18, 2014 (see **Exhibit B**), and specifically invited District 204 to clarify its arguments for dismissal. In denying the motion to dismiss, the Court noted that it appeared the funds alleged in the complaint were “public monies” such that the statute of

limitations would not apply.<sup>1</sup> The Court invited District 204 to clarify its arguments, and gave District 204 leave to file a motion for reconsideration on or before August 12, 2014.

The Court should reconsider its denial of the motion to dismiss because binding case law makes clear that:

(1) Plaintiff's claims relating to audit expenses Plaintiff allegedly paid to Baker Tilly are subject to the statute of limitations because, once paid, those funds were no longer held in trust;

(2) Plaintiff's claims involving interest overpayments Plaintiff allegedly made to District 204 are also subject to the statute of limitations because, once paid, those funds were no longer held in trust; and

(3) Plaintiff's claims for payment of District 204's *pro rata* share of the expenses of Plaintiff's treasurer's office are subject to a five-year statute of limitations because those claims do not involve the interest of the general public in the State of Illinois.

For those reasons, and as discussed below in more detail, the Court should reconsider its June 18, 2014 order and find that all of Plaintiff's claims in existence prior to October 17, 2008 are time-barred.

### ARGUMENT

The Court should reconsider its June 18, 2014 order in part by finding that several of Plaintiff's claims are time-barred, including those relating to the alleged payment of audit expenses, overpayment of interest, and reimbursement of certain expenses of Plaintiff's

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<sup>1</sup> The Court further ruled that the issue of *laches* was premature at this time. While not addressed in this motion, District 204 will assert *laches* as an affirmative defense in this matter.

treasurer's office. A motion to reconsider is appropriate in several circumstances, including for the purpose of "bring[ing] to the court's attention . . . error in the court's previous application of existing law." *See, e.g., Hartzog v. Martinez*, 372 Ill. App. 2d 515, 522, 865 N.E.2d 492 (1st Dist. 2007). Respectfully, the Court erred in applying the law when it issued its June 18, 2014 ruling denying District 204's motion to dismiss.

**I. PLAINTIFF'S CLAIM FOR REIMBURSEMENT OF AUDIT EXPENSES PLAINTIFF PAID TO THIRD-PARTY BAKER TILLY DATING BACK TO 1993 IS SUBJECT TO THE FIVE-YEAR STATUTE OF LIMITATIONS.**

The Court erred in ruling that funds Plaintiff<sup>2</sup> paid to third-party, private auditing firm Baker Tilly remained "public funds" even after the payments were made and the monies changed hands. Illinois law directly contradicts that position.

The Illinois Supreme Court in *School Directors of District No. 5. v. School Directors of District No. 1*, 105 Ill. 653, 655-56 (1883), ruled that even funds held in trust are subject to the statute of limitations once those funds are paid out by the trustee. The plaintiff in *School Directors* was a township treasurer who paid out funds to a school district and later determined that the school district was not entitled to receive those funds. *Id.* at 655-56. The township treasurer sued the school district to recover the erroneously-paid funds, and the school district argued that the statute of limitations applied to the township treasurer's claim. The Illinois Supreme Court agreed with the school district and held that once the funds were paid out, they could no longer be considered "a trust fund in [the township treasurer's] hands which would exclude the operation of the Statute of Limitations." *Id.* at 656. Accordingly, the court held that

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<sup>2</sup> To simplify District 204's argument, this Motion will not differentiate between what actions Plaintiff's board allegedly took and what actions Plaintiff's treasurer's office allegedly took relative to Plaintiff's claims against District 204. Plaintiff's board and treasurer's office do not have legal identities separate and apart from Plaintiff. As such, there is no need to differentiate between the activities of the board and treasurer's office.

the five-year statute of limitations applied and barred the township treasurer from recovering the funds it allegedly improperly paid out more than five years before filing suit against the school district. *Id.*<sup>3</sup>

The exact same proposition is true here when it comes to the auditing expenses Plaintiff allegedly paid to Baker Tilly dating back to 1993. Binding Supreme Court authority (*School Directors*) and persuasive Appellate Court authority on which Plaintiff itself relies (*Arnold*) hold that funds held in trust become subject to the statute of limitations once those funds are paid out of the trust. Here, assuming for the sake of argument that the funds Plaintiff held were trust funds, the statute of limitations began to run once Plaintiff paid Baker Tilly for the audit expenses. Illinois law clearly bars Plaintiff from recovering any payment it allegedly made to Baker Tilly on District 204's behalf at any time more than five years prior to the date on which Plaintiff filed suit in this action. As such, Plaintiff's claims for payments it made to Baker Tilly at any time prior to October 17, 2008 are time-barred and must be dismissed.

The Court erred in applying the law when it ruled that funds paid out to Baker Tilly remained trust funds that were not subject to the statute of limitations.

## **II. PLAINTIFF'S CLAIM FOR REIMBURSEMENT OF INTEREST PAYMENTS IS ALSO SUBJECT TO THE FIVE-YEAR STATUTE OF LIMITATIONS.**

The Court also erred when it ruled that interest payments on investments that belong to District 204 and that Plaintiff actually *paid out* to District 204 dating back to 1995 still remained Plaintiff's own trust funds that were not subject to any limitations period. Once again, binding authority makes clear that once Plaintiff paid those funds to the beneficiary—here, District

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<sup>3</sup> Even the case law on which Plaintiff relied in its briefing recognized the indisputable fact that, once funds are paid, any claim relating to those funds becomes subject to the five-year statute of limitations. *See* Resp. at 10; *Trs. of Sch. v. Arnold*, 58 Ill. App. 103, 108 (4th Dist. 1895) (noting that the statute of limitations applies once funding is “paid out to the beneficiaries,” when the funding has “reached its ultimate agent for appropriation.”).

204—the five-year statute of limitations began to run.

As discussed above, the Illinois Supreme Court in *School Directors* held that once funds leave a township treasurer's hands, they can no longer be considered "a trust fund in [the township treasurer's] hands which would exclude the operation of the Statute of Limitations." *Id.* at 656. The *Arnold* decision on which Plaintiff relies confirms that the limitations period begins to run once funding is "paid out to the beneficiaries," when the funding has "reached its ultimate agent for appropriation." 58 Ill. App. at 108. These holdings make clear that the statute of limitations began to run on any claim relating to interest payments as soon as Plaintiff paid those funds out to District 204, the beneficiary.

Plaintiff's Complaint seeks reimbursement of annual interest payments Plaintiff supposedly paid in error to District 204 dating back to 1995. Even assuming the interest accruals qualified as trust funds *when they were in Plaintiff's possession*, it is fundamental that *after Plaintiff paid out those funds to District 204* they were no long funds Plaintiff was holding in trust. In other words, once Plaintiff made interest payments to beneficiaries, the funds paid out could no longer be classified as Plaintiff's trust funds. *School Directors* and *Arnold* both teach that the statute of limitations began to run as soon as Plaintiff made the interest payments to District 204. As such, any interest payment Plaintiff made more than five years before filing suit (*i.e.*, before October 17, 2008) is time-barred.

The Court erred in applying the law when it ruled that funds Plaintiff actually paid out to beneficiaries in the form of interest payments remained funds that Plaintiff held in trust for beneficiaries such as District 204.

### III. THE FIVE-YEAR STATUTE OF LIMITATIONS ALSO APPLIES TO PLAINTIFF'S CLAIM FOR PRO RATA EXPENSE PAYMENTS.

The Court further erred in ruling that the statute of limitations does not apply to Plaintiff's claim that District 204 failed to pay its *pro rata* share of annual expenses of Plaintiff's treasurer's office dating back to 2000. The court stated in its June 18, 2014 oral ruling that because "public monies" were involved, the limitations period was inapplicable. A party cannot avoid the statute of limitations simply because public—as opposed to private—funds are at issue. Rather, the controlling question is whether there are public *rights* at stake.

Not all rights a governmental entity asserts qualify as "public rights." *See, e.g., Brown v. Trs. of Sch.*, 224 Ill. 184, 79 N.E. 579 (1906). The statute of limitations does not run regarding the affairs of local governmental entities where those affairs "affect the *general public*." *Id.* at 186 (emphasis added). The interest of the general public is *not* necessarily the same as the interest of the residents of a locality. *Id.* at 187 ("[T]here is a well founded distinction between cases where the municipality is seeking to enforce a right in which the public in general have an interest in common with the people of such municipality, and cases where the public have no such interest . . . ." *Id.* at 187 (citing *County of Piatt v. Goodell*, 97 Ill. 84 (1880))).

Illinois courts have held that a general public interest exists in highways and streets because such infrastructure is "not for the use of inhabitants of any municipality or locality alone, but for the *free and unobstructed use of all the people in the State*." *Brown*, 224 Ill. at 188 (emphasis added). Those types of rights are "are clearly distinguishable from the rights or interests of the inhabitants of a locality in property acquired for mere local use, such as city offices, a library site or the use of a fire department. *Such property is held and used for strictly local purposes*." *Id.* at 188 (emphasis added). The *Brown* court held that "[t]he people of the

State in general have no interest, in common with the inhabitants of a school district, in the [subject] school house site or the proceeds of it. The use and right are confined to the particular local district,” such that the statute of limitations would apply to those localized claims. *Id.* at 189.

Here, Plaintiff has pled no facts establishing that District 204’s supposed underpayment of its *pro rata* share of the annual expenses of Plaintiff’s treasurer’s office affected a general public interest. Rather, the allegations of the Complaint make clear that only a few local school districts could have realized any impact. The people of the State of Illinois, who live across over eight hundred school districts, in general have no interest in the limited activities Plaintiff performs on behalf of a few local school districts. The five-year statute of limitations applies to Plaintiff’s claims for *pro rata* expense payments, and those claims in existence before October 17, 2008 are time-barred.

The Court erred in applying the law when it ruled that because “public monies” were involved the statute of limitations could not apply to Plaintiff’s claims for payment of District 204’s *pro rata* share of the annual expenses of Plaintiff’s treasurer’s office.

WHEREFORE, defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, respectfully requests that this Court: (1) reconsider its order of June 18, 2014; (2) enter an order dismissing all of Plaintiff’s claims predating October 16, 2008, with prejudice; and (3) grant such further relief as the Court deems just and reasonable.

Dated: August 12, 2014

By: \_\_\_\_\_



One of the Attorneys for Defendant,  
LYONS TOWNSHIP HIGH SCHOOL DISTRICT  
204



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Firm I.D. No. 42297

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Township Trustees

v.

No. 13 CH 23386

Lyonis Township H.S. Dist. 204

ORDER

This cause coming to be heard for ruling on Defendant's Motion to Dismiss, due notice having been given and the Court being fully advised in the premises;

IT IS HEREBY ORDERED: Defendant's Motion to Dismiss is denied, without prejudice. This matter is continued to 7/18/14 at 9:30 a.m. for status on the pleadings.

Atty. No.: 42297

Name: Dykema

Atty. for: Defendant

Address: 10 S. Wacker, Ste. 2300

City/State/Zip: Chicago, IL 60606

Telephone: (312) 576-1700

ENTERED:

Dated:

ENTERED
JUDGE SOPHIA H. HALL 0162
JUN 18 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL.
DEPUTY CLERK

Judge

Judge's No.

EXHIBIT

A

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

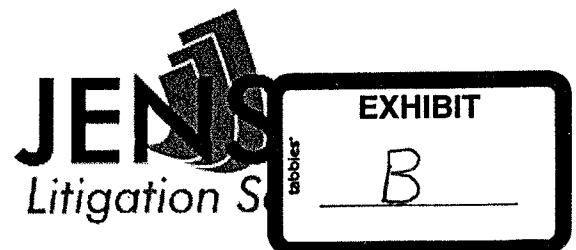
Township Trustees vs. Lyons District 204

13 CH 23386

Court Proceeding

Taken on: April 29, 2014

JENSEN LITIGATION SOLUTIONS  
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1 STATE OF ILLINOIS )  
 ) SS.  
2 COUNTY OF COOK )

3  
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

5 TOWNSHIP TRUSTEES OF )  
6 SCHOOLS, TOWNSHIP 38 NORTH, )  
RANGE 12 EAST, )  
7 )  
Plaintiff, )

8 vs. )

) No. 13 CH 23386

9 )  
10 LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT NO. 204, )  
11 )  
Defendant. )

12  
13 Report of proceedings had at the hearing in  
14 the above-entitled cause before the HONORABLE SOPHIA H.  
15 HALL, Judge of said Court, commencing at 10:44 a.m. on  
16 April 29, 2014.

17 APPEARANCES:

18 KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C., by  
19 MR. DOUGLASS G. HEWITT  
On behalf of the Plaintiff;

20 DYKEMA GOSSETT, PLLC, by  
21 MR. STEPHEN M. MAHIEU  
On behalf of the Defendant.  
22  
23  
24

1 THE COURT: All right. You may argue.

2 MR. MAHIEU: Good morning, your Honor. Stephen  
3 Mahieu on behalf of the defendant Lyons Township High  
4 School District 204.

5 MR. HEWITT: Good morning, your Honor. Douglass  
6 Hewitt on behalf of the plaintiff, the Township Trustees  
7 of Schools.

8 THE COURT: All right. One of the problems I had  
9 in learning this operation with the Townships, I know  
10 they're kind of relics of the past and they still exist,  
11 was the fact that you referenced these different  
12 entities in not the same way. So it got a little  
13 difficult for me to understand who you were talking  
14 about. So --

15 MR. MAHIEU: As between --

16 THE COURT: -- why don't you tell me -- As between  
17 the plaintiff Township Trustees, the defendant Lyons  
18 Township and something called the TTO, which is some  
19 kind of a Treasurer, which is a different Treasurer than  
20 the Lyons Township Treasurer. I gather it's some sort  
21 of third entity that sits there. So why don't you tell  
22 me what you're going to call them now. And, as a matter  
23 of fact, what you might do is to give me a little  
24 tutorial on who the entities are and how they relate to

1 each other, use the same language as you refer to them,  
2 and then we can incorporate that language into the  
3 argument so I can understand who did what to whom with  
4 which.

5 MR. MAHIEU: Sure, your Honor. As the plaintiff  
6 here, the Township Trustees of Schools --

7 THE COURT: And you represent?

8 MR. MAHIEU: I represent the defendant.

9 THE COURT: And you are? Your name again?

10 MR. MAHIEU: Stephen Mahieu.

11 THE COURT: Okay. And you are?

12 MR. HEWITT: Douglass Hewitt.

13 THE COURT: Okay. And you're for the plaintiff?

14 MR. HEWITT: Yes.

15 MR. MAHIEU: Yes. The -- Setting aside Lyons  
16 Township High School District 204 for the moment, your  
17 Honor, which we can refer to as District 204, the school  
18 district --

19 THE COURT: Okay.

20 MR. MAHIEU: -- if that's useful --

21 THE COURT: And that's the defendant?

22 MR. MAHIEU: That's the defendant.

23 THE COURT: Okay.

24 MR. MAHIEU: The plaintiff is the Township

1 Trustees, and within the Township Trustees there's  
2 something called the TTO or the Township Trustees'  
3 Office. It is under the supervision of the Township  
4 Trustees. The Township Trustees are three elected -- I  
5 believe three elected members of the Board that under  
6 their auspices there's an office called the Township  
7 Trustees' Office, and it undertakes certain activities  
8 on behalf of the Township Trustees and under the  
9 supervision of the Township Trustees. So essentially  
10 plaintiff can be referred to as either one of those, as  
11 the TTO is really an office within the plaintiff's  
12 organization. It's not a separate entity.

13 MR. HEWITT: And to add to the confusion, the  
14 person who administers that office is known as the  
15 Treasurer, and we refer to it differently as the  
16 Township Treasurer's Office. That may be the source of  
17 the confusion, your Honor.

18 THE COURT: Well, it certainly is. And I couldn't  
19 tell how they related because everybody seems to be  
20 blaming that TTO, and I'm going to use that term, for  
21 providing misinformation or not the correct information.  
22 At least somebody's blaming them for that. And that  
23 became the issue because this error -- I'll call it an  
24 error -- seemed not to have been revealed until some

1 decade later or something like that. And, of course,  
2 the other argument was that, Well, you could have  
3 figured out that there was an error if you just looked  
4 at the papers and done your reviews as the statute  
5 allowed.

6 That's sort of what I got out of this in terms  
7 of the laches argument that was being argued by the  
8 defendant. So then there's always the question, if  
9 that's the issue, of whether I can decide these factual  
10 issues as they are for statutes of limitations and  
11 laches in this context if there is a factual question.  
12 And I do realize there is a legal question as to whether  
13 laches or the statute of limitations will apply at all  
14 in this governmental body verses governmental body  
15 dispute. So I was just letting you know I got some of  
16 it but didn't get all of it.

17 MR. MAHIEU: That's -- And hopefully as we move  
18 forward with the argument here, your Honor, it will  
19 become clearer. But, just again, I guess you can look  
20 at the umbrella over the plaintiff as being the Township  
21 Trustees, which is a Board, and with -- you know, within  
22 their authority there is a Township Treasurer's Office,  
23 which we refer to as the TTO. The person who runs the  
24 Township Treasurer's Office is the Treasurer. And so



1 that's all the auspices of the plaintiff, the Township  
2 Trustees. And then we have the defendant, who's  
3 District 209. It's a school district.

4 THE COURT: 204.

5 MR. MAHIEU: I'm sorry. 204. Thank you. The  
6 defendant is District 204.

7 THE COURT: I got that number.

8 MR. MAHIEU: Yes. Thank you, your Honor.

9 THE COURT: All right. Hang on just a moment.

10 (Brief pause.)

11 THE COURT: All right. Now, I have another  
12 argument already behind you, and I have to be through.  
13 So brief is good. I will most likely take yours under  
14 advisement and -- now that I have a better idea of at  
15 least who the parties are, and I'll have an even better  
16 idea about the dispute after your argument.

17 MR. MAHIEU: Okay.

18 THE COURT: So go ahead.

19 MR. MAHIEU: Your Honor, so we're here on our  
20 motion to dismiss. As the Court is aware, the plaintiff  
21 in its verified complaint seeks millions of dollars in  
22 damages from District 204, a governmental entity, for  
23 decades-old claims that it decided to bring in 2013.

24 Plaintiff's claims generally fall into three

1 separate categories, your Honor. The first one is for  
2 interest overpayments that plaintiff asserts it made  
3 beginning 19 years ago in 1995. The second is for --

4 THE COURT: Overpayments to the District?

5 MR. MAHIEU: Overpayments of interest from the  
6 plaintiff to District 204.

7 THE COURT: Okay.

8 MR. MAHIEU: Yeah. So District 204 has investment  
9 funds, and plaintiff has alleged that it overpaid  
10 interest to District 204 for millions of dollars  
11 beginning in --

12 THE COURT: And District 204 was investing the  
13 funds that District 204 had from the plaintiff?

14 MR. MAHIEU: The Township Trustees, the plaintiff  
15 here, invests the funds, your Honor, and it pays out to  
16 District 204 investment payments. So the Township holds  
17 funds and pays out interest to District 204 based on  
18 what it's entitled to, based on how much -- you know,  
19 the funds that it holds in District 204. So every year  
20 it'll --

21 THE COURT: So the plaintiff holds the funds --

22 MR. MAHIEU: Yes.

23 THE COURT: -- and pays interest to the District?

24 MR. MAHIEU: Correct.

1 THE COURT: And they say that they paid too much  
2 interest to the District?

3 MR. MAHIEU: Yes. So the plaintiff determined  
4 apparently after 19 years that it had been paying  
5 incorrect -- or it had miscalculated interest payments  
6 and overpaid District 204 to the tune of some  
7 \$1.38 million.

8 THE COURT: And the funds which the plaintiff was  
9 holding were in the hands of this TTO?

10 MR. MAHIEU: The TTO managed the funds on behalf of  
11 plaintiff -- it's an office within the plaintiff -- and,  
12 yes, with plaintiff's oversight.

13 So that's the first category of claims, your  
14 Honor. The interest -- The so-called interest  
15 overpayments. The second category are for audit expense  
16 reimbursements. Those apparently first began accruing  
17 some 21 years ago.

18 THE COURT: Now, who's auditing whom about what?

19 MR. MAHIEU: This is Baker Tilly and a predecessor  
20 company who allegedly was --

21 THE COURT: Who hired the auditor?

22 MR. MAHIEU: The allegation is that the plaintiff  
23 hired the auditor to perform auditing services on behalf  
24 of District 204. And so the allegation is that over a

1 period of some 21 years, since 1993, the plaintiff has  
2 paid for those financial statements and auditing  
3 expenses for a total cost of over \$473,000; and the  
4 allegation is that the defendant did not pay those costs  
5 dating back to 1993.

6 MR. HEWITT: May I --

7 THE COURT: So the District was supposed to  
8 reimburse the plaintiff for the monies the plaintiff  
9 paid to the auditor to audit on behalf of the District?

10 MR. HEWITT: Your Honor --

11 MR. MAHIEU: Yes, your Honor. The allegation is  
12 that the TTO paid Baker Tilly \$473,000-plus for audit  
13 services rendered to District 204 that was owed by  
14 District 204 and not the TTO and that the TTO, or  
15 plaintiff, has demanded that District 204 reimburse  
16 those costs.

17 MR. HEWITT: In fact, the allegation is that  
18 Baker Tilly was engaged to provide services for 204,  
19 just so the record's clear. That's paragraph --

20 THE COURT: Well, that's what I'm --

21 MR. HEWITT: That's where your confusion is. It's  
22 paragraph 15 of the complaint.

23 MR. MAHIEU: Yeah.

24 THE COURT: So my -- the plaintiff hired the

1 auditor to audit the plaintiff's funds --

2 MR. HEWITT: No. District 204 --

3 THE COURT: -- and the TTO on behalf of  
4 District 204?

5 MR. HEWITT: No.

6 THE COURT: Or District 204 was required to do the  
7 audit, and the auditor was hired by the plaintiff in  
8 order to get that audit done?

9 MR. HEWITT: No.

10 THE COURT: No?

11 MR. HEWITT: The auditors were retained by  
12 District 204 and engaged to audit -- perform audit  
13 services for 204.

14 THE COURT: So 204 -- District 204 hired the  
15 auditor?

16 MR. MAHIEU: Your Honor, if I may, the complaint is  
17 vague, and it includes passive voice. This is part of  
18 our problem with the complaint. We don't know who did  
19 what when or what the allegation is. So the  
20 allegation --

21 THE COURT: Well, I assume that some of this -- the  
22 responsibilities of people to do things are set out by  
23 the statute.

24 MR. MAHIEU: That's correct, your Honor. But the

1 allegation in the complaint is that this accounting firm  
2 was engaged to provide -- it doesn't say who, but they  
3 were engaged to provide audit professional services. It  
4 doesn't detail what those services are. And that's part  
5 of the reason why we've asked for a more definite  
6 statement, which I'll get to.

7 THE COURT: And it's not connected to any statute  
8 or requirements for people to do something?

9 MR. MAHIEU: There are -- I mean, there are  
10 requirements that school districts audit their books. I  
11 don't know that there's a requirement that the TTO  
12 oversee or engage auditors.

13 THE COURT: Well, the school district you're  
14 talking about is District 204.

15 MR. MAHIEU: Correct.

16 THE COURT: So the school district audits its  
17 books, but are its books the same books that the  
18 Township has?

19 MR. MAHIEU: It's hard to say, your Honor. From  
20 the complaint, it's vague, as I said.

21 THE COURT: Well, how about from the statute,  
22 which -- I'm assuming that the statute sets up the  
23 responsibilities of the individuals and --

24 MR. HEWITT: It does, your Honor. And they are

1 separate.

2 MR. MAHIEU: And the plaintiff has to -- does have  
3 to audit the funds within its control as well. And so  
4 the question does not answer --

5 THE COURT: And that's pursuant to statutory  
6 requirements?

7 MR. MAHIEU: That the plaintiff audits its own --  
8 the funds within its own control.

9 THE COURT: Well, maybe if I understood the  
10 statutory scheme, then I would understand who had the  
11 responsibility to do things, and then the question  
12 becomes how those responsibilities were executed in real  
13 life.

14 MR. MAHIEU: Well, it would be nice, your Honor, if  
15 that were alleged here; but it's not alleged as to, you  
16 know, what these auditing services related to, precisely  
17 who hired them, what services were performed, what  
18 services were done and what years. And that's really  
19 part of the problem. That goes to our last argument  
20 that this is a --

21 THE COURT: So the third thing that they complain  
22 about is what?

23 MR. MAHIEU: The last argument we have, the third  
24 argument, is that we need a more definite statement.

1           Oh, I'm sorry. What's the third argument of  
2 the plaintiff? Okay.

3           THE COURT: Yeah. But that's -- the plaintiff says  
4 the District did it wrong.

5           MR. MAHIEU: Yes. The last part, your Honor, is  
6 the pro rata share expense payment, that's their term,  
7 that under a statute District 204 is required to cover a  
8 narrow band of costs that the Township Treasurer incurs  
9 each year, and they split that between all of the  
10 districts based --

11          THE COURT: Now, the Township Treasurer is the TTO  
12 office, right?

13          MR. MAHIEU: It's the TTO. Correct, your Honor.  
14 So that includes the Treasurer's compensation, the cost  
15 of an annual statement, the cost of a record book, if  
16 any, and the cost of dividing school lands. And that's  
17 within the School Code, Section 5-17. So there's a  
18 narrow band of costs that the school districts within  
19 the bounds of the plaintiff are to cover based on  
20 their -- based on their pro rata share of expenses.

21                 And so the third item that they make is that  
22 over the last 14 years District 204 has not paid its  
23 full amount of pro rata share expenses.

24                 So the first argument that the defendants have



1 set forth is that a five-year statute of limitations  
2 applies such that claims that were in existence on or  
3 prior to October 17, 2008 should be barred. The  
4 plaintiff, from what we can tell, does not dispute that  
5 the five-year statute of limitations is the relevant  
6 limitations period. It only argues that the statute  
7 should not be applied to it. The Illinois Supreme Court  
8 has weighed in on this issue and held that the five-year  
9 statute of limitations applies to claims between  
10 governmental entities for funds that were actually paid  
11 out improperly. So here that would be the interest  
12 payments and the --

13 THE COURT: Which case was that?

14 MR. MAHIEU: That is the School Directors case,  
15 your Honor.

16 THE COURT: And that's that 19- -- that  
17 1880-something case?

18 MR. MAHIEU: School Directors --

19 THE COURT: Yes. That's an 1883 case.

20 MR. MAHIEU: That sounds right, your Honor. It is.

21 THE COURT: Okay.

22 MR. MAHIEU: It's an Illinois Supreme Court case.  
23 Most of the case law is rather old.

24 THE COURT: A vintage case.

1 MR. MAHIEU: Yes, yes. And as you'll see, most of  
2 the cases are from the 1800s or early 1900s.

3 But the School Directors case is directly on  
4 point here, your Honor. It's from the Illinois Supreme  
5 Court. It illustrates that the five-year statute of  
6 limitations applies to the interest payments that they  
7 allegedly overpaid and the auditing expenses. In that  
8 case the Township Treasurer paid funds to a school  
9 district that it later alleged the school district was  
10 not entitled to receive in the first instance. The  
11 trouble was that it waited until more than five years  
12 after those payments were made and filed suit. The  
13 court held that the statute of limitations applied and  
14 that it began to run as soon as those funds were paid  
15 out. So once the money left the Treasurer's Office,  
16 that statute of limitations began to apply because they  
17 could in no way be considered a trust fund. So the  
18 court held in that circumstance the five-year statute of  
19 limitations applied.

20 And even a case cited by the plaintiff, the  
21 Arnold case, which isn't binding authority because it  
22 was pre-1935, an appellate court case, but even that  
23 case recognizes that the statute of limitations begins  
24 to run once funding is actually paid out. So the same

1 is true here. The plaintiff, through the Trustees'  
2 Office, the TTO, paid out funds to District 204  
3 related --

4 THE COURT: Was that a misstatement? You said  
5 Trustees' Office. You mean the Treasurer's Office?

6 MR. MAHIEU: I'm sorry. The Treasurer's Office.  
7 Yes, your Honor.

8 THE COURT: Okay.

9 MR. MAHIEU: So the plaintiff through the  
10 Treasurer's Office paid out funds to District 204 over a  
11 period of 17 years, your Honor; and as they made those  
12 payments, when the money left their hands, the statute  
13 of limitations began to run. They were not being held  
14 in trusts in any way, and School Directors, which is  
15 still good law, holds that such payments are subject to  
16 the five-year statute of limitations.

17 So the plaintiff's interest payments and any  
18 auditing payments it claims it made on behalf of  
19 District 204 prior to October 17, 2008, which is five  
20 years before the complaint was filed, are barred by the  
21 catchall statute of limitations.

22 THE COURT: Okay.

23 MR. MAHIEU: In addition, the five-year statute of  
24 limitations applies to the so-called pro rata share

1 claim. The plaintiff argues that the five-year statute  
2 of limitations should not apply because the TTO's  
3 expenses are public rights. Well, as we've discussed,  
4 the complaint is pretty straight here when it comes to  
5 facts, and I don't see facts alleging or establishing  
6 that the expenses of the TTO were sufficient public  
7 rights. There's nothing demonstrating that the TTO's  
8 staplers or whatever other expenses they were asking us  
9 to cover, that those had an impact on general Illinois  
10 public rights. And, once again, the Illinois Supreme  
11 Court has weighed in on this issue and placed limits on  
12 when governmental entities may avoid a statute of  
13 limitations.

14 The Supreme Court in the Brown vs. Trustees of  
15 Schools case held that the statute of limitations with  
16 respect to governmental affairs representing -- or I'm  
17 sorry -- affecting the general public does not run. So  
18 if it's a governmental affair affecting the general  
19 public, the statute of limitations doesn't run. In that  
20 case the court noted that a public interest in streets  
21 and highways affected the general public because they  
22 were, quote, For the use of all the people in the state.

23 And the plaintiff's Shelbyville case reached  
24 that same conclusion, that public streets are for the

1 public interest, as did the plaintiff's AC&S case.  
2 There was a statewide interest expressed by the state  
3 legislature in abating asbestos from school buildings  
4 throughout the state. So, again, a statewide interest.  
5 And the Brown case distinguished those types of  
6 statewide interests from pure local rights. And the  
7 examples they gave were interests in city offices or  
8 library sites or the use of a fire department or the  
9 like. Those are local purposes to which the statute of  
10 limitations does not apply. The court said that, quote,  
11 People of the state in general have no interest,  
12 unquote, in those types of local interests.

13 So here there's no facts in the complaint  
14 demonstrating that the TTO's -- that the funds paid to  
15 cover the TTO's expenses impacts a general public  
16 interest in this case. At most it's a member -- a  
17 member of school districts within the TTO, and there's  
18 no allegation that the general public interest is  
19 involved.

20 And the cases cited by the plaintiff in an  
21 attempt to circumvent the five-year statute of  
22 limitations are indistinguishable. The City of Lincoln  
23 case predated the Brown case I was just discussing by  
24 30 years, and it involved a formulaic statutory split of

1 tax revenues. It's just not the same here. There's no  
2 allegation that District 204 is holding tax revenues and  
3 trusts for the plaintiff.

4 Clair involved a private taxpayer's objections  
5 to property taxes, and it involved the interplay between  
6 state tax collection and local government. Arnold, as I  
7 mentioned earlier, predated Brown. It's an appellate  
8 court --

9 THE COURT: I'll read those cases.

10 MR. MAHIEU: Okay.

11 THE COURT: The next argument that you have --

12 MR. MAHIEU: Is laches.

13 THE COURT: -- is laches?

14 MR. MAHIEU: Yes, your Honor.

15 THE COURT: And that would even affect those  
16 matters within the five-year statute of limitations?

17 MR. MAHIEU: Yes, your Honor. So we argue that  
18 laches applies as well. And the plaintiff makes much  
19 ado about the fact that it's a governmental entity here,  
20 your Honor. And there's cases involving governmental  
21 entities on the one hand and private individuals or  
22 private companies on the other hand that say, Well,  
23 laches generally doesn't apply between those two except  
24 for in certain circumstances. And here what it does not

1 mention and what is, I think, a big deal is that we are  
2 dealing with two governmental entities. So the  
3 interests of not applying laches to governmental  
4 entities go out the window.

5 Other courts -- We did not see an Illinois  
6 court specifically addressing or opining on application  
7 of laches between two governmental entities, but in a  
8 couple of sister states the courts have held that -- in  
9 the Duran case and the City of Monett case they held  
10 that when both entities are governmental entities  
11 there's not a concern about applying laches because both  
12 governmental entities are interested in preserving the  
13 public rights. So that -- we think that argument goes  
14 out the door.

15 Additionally, there's case law holding that  
16 prejudice is presumed when a claim is not brought in a  
17 timely fashion against a public entity. So here claims  
18 going back nearly two decades being brought against  
19 District 204, prejudice should be presumed because the  
20 claims were not brought promptly against the District.

21 The next argument the plaintiff makes in an  
22 attempt to avoid laches is that the complaint doesn't  
23 allege any affirmative act by the plaintiff. And that's  
24 just not the case, your Honor. The complaint alleges

1 that the plaintiff apportioned interest through its own  
2 calculations over a 17-year period and paid those  
3 amounts out to District 204, that -- there's no  
4 allegation that District 204 knew of the overpayment or  
5 that it was told not to spend those funds.

6 Similarly, it's alleged that the plaintiff  
7 determined its pro rata billings and it invoiced  
8 District 204. The plaintiff accepted certain payments  
9 from District 204 throughout the years, over a decade,  
10 continued issuing new invoices every single year, and  
11 there's no allegation that the plaintiff ever complained  
12 of any underpayment. So there was an affirmative matter  
13 here --

14 THE COURT: You mean an overpayment.

15 MR. MAHIEU: Underpayment of the pro rata share,  
16 your Honor.

17 THE COURT: Oh, okay.

18 MR. MAHIEU: There's no -- There's just no  
19 allegation that they ever complained of any  
20 underpayment. Instead, they continued with this  
21 relationship for a period of nearly two decades and sat  
22 silently.

23 And so we've also -- I've mentioned that  
24 prejudice is presumed, but I think the Court can also



1 take judicial notice of prejudice to District 204  
2 because the School Code required District 204 over the  
3 17-plus years --

4 THE COURT: Well, your laches claim goes both to --  
5 goes to both the failure -- the overpayments -- the  
6 payments to -- Okay. You use as your example the  
7 payments from District 204 to the plaintiff. Is your  
8 laches argument also being applied to the plaintiff's  
9 claim that it overpaid District 204 and --

10 MR. MAHIEU: Yes. It goes to both.

11 THE COURT: It goes to both of them, right?

12 MR. MAHIEU: Exactly.

13 THE COURT: That's what I thought.

14 MR. MAHIEU: It goes to both. And the Court can  
15 take -- You know, the plaintiff has argued that there's  
16 no prejudice here, there's no prejudice alleged. But  
17 the Court can take judicial notice of the existence of  
18 the School Code and the requirements within the School  
19 Code that over the two decades here District 204 was  
20 required to pass budgets every single year. And as the  
21 Court knows, there's not unlimited funds.

22 So every year District 204, based on its  
23 financial situation, including its relationship with the  
24 plaintiff, its receipt of the interest payments and the

1 like, it had to pass budgets. And so prejudice is clear  
2 here even if the -- if District 204 had to prove  
3 extraordinary circumstances, as the plaintiff has  
4 alleged. That exists here. We're dealing with decades  
5 of underpayments, and that affects thousands of students  
6 and community members.

7 And then the last point, your Honor, which we  
8 addressed a little bit earlier, is that the plaintiff  
9 hasn't pled facts in support of all of these claims.  
10 They're seeking millions of dollars. And they just  
11 haven't pled sufficient facts. They haven't attached  
12 any invoices. They claim that the reason we owe money  
13 is that they issued these invoices for the pro rata  
14 share.

15 THE COURT: Well, isn't that evidence?

16 MR. MAHIEU: Your Honor, it can be evidence. But  
17 here there's no -- there's no basis factually. So  
18 that's one way for them to show factually how they  
19 arrived at the numbers. I don't think that they can  
20 just allege we owe this number. Well, how? What's the  
21 basis for that? Why haven't you alleged facts showing,  
22 you know, this is the type of service the TTO provided,  
23 these are the types of claims that --

24 THE COURT: Well, it would seem that there are

1 facts within the knowledge of the plaintiff that you're  
2 saying they could have alleged in order to support, I  
3 guess, conclusory statements.

4 MR. MAHIEU: That's exactly right, your Honor. And  
5 they're asking us to file a verified answer to a  
6 complaint that we don't know what in the world is --

7 THE COURT: So that's their 2- -- Is this a 2619 --  
8 a 2615 motion or just a 2619?

9 MR. MAHIEU: This is -- That's apportioned for a  
10 motion for a more definite statement, your Honor.

11 THE COURT: All right. So then you're being  
12 generous. You're saying that they should give you more  
13 information rather than saying without it it's  
14 conclusory and doesn't support their cause of action?

15 MR. MAHIEU: That's right, your Honor. We're just  
16 asking for more facts, more support because we can't  
17 respond to a verified complaint that includes only  
18 conclusions that you owe this much money. Well, how do  
19 we know? How do we -- How do we conclude that? The  
20 documents are in their possession.

21 THE COURT: All right. Counsel, you may respond.  
22 Obviously the burden is on the movant. So you can give  
23 a brief response.

24 MR. HEWITT: I'll be very brief. The last

1 argument that --

2 THE COURT: Because I've got -- obviously I have to  
3 read the cases --

4 MR. HEWITT: Thank you, your Honor.

5 THE COURT: -- now that I understand what I'm  
6 looking for.

7 MR. HEWITT: The last argument is the easiest.  
8 That is evidence. They've asked us to attach copies of  
9 the invoices. Our cause of action is not founded on the  
10 written instruments --

11 THE COURT: That's why I asked if your allegations  
12 are so lacking in some kind of factual support for the  
13 conclusions that there were overpayments. Then that  
14 might be a reason since there's no example of an  
15 overpayment. He's not making that claim.

16 MR. HEWITT: Yeah.

17 THE COURT: So I assume there's a reason why he's  
18 not.

19 All right. Go ahead.

20 MR. HEWITT: Sure. The Township Treasurer's Office  
21 and the Treasurers hold money held on behalf of a number  
22 of school districts, not just 204, a host of school  
23 districts. That money is held in trust to fund public  
24 education and inherently public function. The money is

1 held in trust. The TTO is not able to generate revenue  
2 on its own. If one district such as 204 fails to pay  
3 its fair share of the expenses, then --

4 THE COURT: Let me ask this question. I gather  
5 that the District does not have a Treasurer.

6 MR. HEWITT: I don't believe that they do.

7 THE COURT: Right. So the statutory structure is  
8 to -- is for the Townships to designate funds that are  
9 to be used for District expenses and requirements, and  
10 they keep those funds, and they invest those funds, I  
11 guess --

12 MR. HEWITT: The School --

13 THE COURT: -- and then they pay the interest  
14 that's generated from those funds to District 204.

15 MR. HEWITT: And others.

16 THE COURT: And others. I gather there was  
17 something about that.

18 MR. HEWITT: Yeah. Well, it's a complex regulatory  
19 scheme, and it is set forth in the School Code.

20 THE COURT: No, I know. And that's why I'm trying  
21 to understand what's involved so I can understand by the  
22 scheme what went wrong with it here.

23 MR. HEWITT: The TTO holds funds on behalf of 12  
24 school districts and a couple other small governmental

1 entities. It invests those funds.

2 THE COURT: Now, you say the TTO. The 12 --

3 MR. HEWITT: The plaintiff.

4 THE COURT: -- districts?

5 MR. HEWITT: The plaintiff.

6 THE COURT: Oh, the elementary school districts and  
7 other districts?

8 MR. HEWITT: High schools and others, yes.

9 THE COURT: Also within the Township?

10 MR. HEWITT: Correct. Yes.

11 THE COURT: Okay. Got it.

12 MR. HEWITT: So my client, the plaintiff, holds  
13 funds on behalf of District 204 and other school  
14 districts which are then used -- some of those funds are  
15 used to pay for the operation of schools, to educate  
16 children, an inherently public function. And it's a  
17 clothes-on system. We don't have the ability to  
18 generate revenue. And so if monies are not paid in by  
19 one, they have to be paid in by somebody else or we run  
20 a deficit.

21 THE COURT: What does that mean?

22 MR. HEWITT: That means that we don't have -- my  
23 client doesn't have the ability to tax or to generate  
24 revenue.

1 THE COURT: So who's supposed to be paying the  
2 monies that are put into the office?

3 MR. HEWITT: It comes from the Treasurer's  
4 Office -- the Cook County Treasurer's Office --

5 THE COURT: Okay.

6 MR. HEWITT: -- from real estate taxes and other  
7 sources.

8 THE COURT: That's for the taxes?

9 MR. HEWITT: Right.

10 THE COURT: And the county taxes, certain amounts  
11 are paid to the Townships; the Townships keep the money,  
12 I gather, and they're designated for the various  
13 districts and other entities who are supposed to be  
14 receiving those funds pursuant to whatever tax rates  
15 were applied, and county fund taxes were received from  
16 the citizens?

17 MR. HEWITT: It's an archaic system, and it's  
18 complex.

19 THE COURT: I'm aware of that.

20 MR. HEWITT: The bottom line is --

21 THE COURT: I'm aware of that.

22 MR. HEWITT: -- my client holds -- keeps the 204  
23 and other districts' funds in trust.

24 THE COURT: Now, your office, the TTO office, which

1 is supervised by your client, the plaintiff, is charged  
2 with maintaining those funds, investing those funds and  
3 then paying interest out apparently to District 204,  
4 and obviously there's an auditing function so that  
5 District 204 can be aware that you are properly handling  
6 and investing and paying out funds; is that right? Is  
7 that the way it works?

8 MR. HEWITT: There is a statutory scheme that  
9 requires a whole host of reporting. That's true.

10 THE COURT: Okay. So your client's in charge of  
11 those funds?

12 MR. HEWITT: It is.

13 THE COURT: All right.

14 MR. HEWITT: It is. And it holds them in trust.

15 THE COURT: All right.

16 MR. HEWITT: That's the key. This motion raises  
17 legal issues, factual issues --

18 THE COURT: Well, what did District 204 do wrong  
19 that District 204 is relying on your client to invest  
20 the funds, manage the funds, add and subtract the funds  
21 and then make a determination as to what interest your  
22 client is going to pay to the District?

23 MR. HEWITT: They didn't pay their fair share was  
24 the bottom line under the statute.



1 THE COURT: Their fair share of the overpayments of  
2 interest?

3 MR. HEWITT: No, no. There's three elements to the  
4 claim.

5 THE COURT: Well, let's deal with the first one.  
6 Your client invests the funds, determines where they  
7 will invest it, calculates the interest and pays the  
8 interest to District 204, and now your client says,  
9 Oops, we made some mistake about how we invested and  
10 calculated the interest, and we want District 204 to  
11 return the money back --

12 MR. HEWITT: Yes.

13 THE COURT: -- to us after 14 years?

14 MR. HEWITT: Yes, ma'am.

15 THE COURT: What did District 204 do wrong?

16 MR. HEWITT: They received monies that they're not  
17 entitled to.

18 THE COURT: But they had nothing to do -- How would  
19 they know they weren't entitled to the funds when your  
20 client was the one counting them, investing them and  
21 adding it up and determining what the interest is?

22 MR. HEWITT: Both sides have access to the data.  
23 Somebody could have caught it. Nobody caught it. And  
24 that's one of our claims, that we're entitled to receive

1 the monies back. I mean, laches and the statute of  
2 limitations -- You know, we're talking about an error by  
3 an individual. This -- If the --

4 THE COURT: But it's your individual, and aren't  
5 you the one first to determine whether that individual  
6 is doing their job right?

7 MR. HEWITT: Well, I understand that. But they --

8 THE COURT: When I say you, I don't mean you  
9 personally.

10 MR. HEWITT: No, I understand. I understand.  
11 Laches and the statute of limitations are somewhat  
12 related in that they recognize that application of a  
13 time-based defense could impair governmental function,  
14 and valuable public interests may be lost because of the  
15 negligence or a mistake of an individual governmental  
16 official, and that's what's happened here.

17 THE COURT: So I think the District is then relying  
18 on the plaintiff in providing the interest payments to  
19 them in the correct amounts and then passes a budget  
20 based upon what the income is and what it's perceived to  
21 be. Isn't it really difficult to unravel that after  
22 14 years when they've been operating for that period of  
23 time based upon -- I mean, that's --

24 MR. HEWITT: It certainly is going to be complex,

1 your Honor. But the fact of the matter is, their  
2 prejudice is they didn't have to pay monies that they  
3 were owed or they received monies to which they weren't  
4 entitled. How is that prejudicial?

5 THE COURT: Yeah. Let me ask this question. With  
6 respect to the audit expense, I assume that -- the  
7 responsibilities for hiring an auditor, paying an  
8 auditor and then looking at the results of the audit,  
9 whose responsibility is that?

10 MR. HEWITT: 204. It's their auditor. Our guys  
11 paid it. We paid --

12 THE COURT: Paid --

13 MR. HEWITT: We paid 204 auditor's fees.

14 THE COURT: Okay.

15 MR. HEWITT: That's what the allegation is. Not  
16 our own. We paid District 204's auditor's fees. They  
17 were retained by 204, engaged by 204 and rendered  
18 services to 204.

19 THE COURT: Now -- And you're looking for a  
20 reimbursement?

21 MR. HEWITT: Yes.

22 THE COURT: So what are you looking for? Is it  
23 because the auditor didn't do the audit or what?

24 MR. HEWITT: We're looking to be reimbursed the

1 amounts that we advanced on behalf of 204.

2 THE COURT: Okay. So --

3 MR. HEWITT: We paid their auditor's --

4 THE COURT: -- the auditor's fee is a line item in  
5 204's budget, and you didn't get that money?

6 MR. HEWITT: I don't know how that's factually  
7 accurate. But the bottom line is, we paid their  
8 auditor's fee.

9 THE COURT: All right. I guess my problem is, this  
10 is, as you say, a complicated statutory structure, and I  
11 just am trying to understand where the responsibilities  
12 are. Sometimes statutes aren't complete --

13 MR. HEWITT: Right.

14 THE COURT: -- and they may not give an answer to a  
15 relevant question. But --

16 MR. HEWITT: Those questions respectfully go to the  
17 merits, your Honor. This is addressing the preliminary  
18 motion.

19 THE COURT: No, no. I'm not going to the merits  
20 right now. Assumably, the statute sets up  
21 responsibilities. Now, the merits are whether the  
22 statute was followed in the execution under these  
23 circumstances.

24 All right. I think what I'm going to do now,

1 because this is too exciting to believe, I'm going to  
2 read -- now that I understand something about this, I'm  
3 going to read the briefs. I'm going to set it for  
4 status. I don't know if I'm going to decide it then,  
5 but I will be able to have more intelligent questions to  
6 ask --

7 MR. HEWITT: Very well.

8 THE COURT: -- and also determine whether or not  
9 this matter can be determined on a motion to dismiss  
10 because there may well be too many factual questions if  
11 the legal questions are resolved for the Court to be  
12 able to determine this on a motion to dismiss.

13 MR. MAHIEU: And, your Honor, you had asked a  
14 question about whose duties -- whose duties they are to  
15 look at these funds and determine the amounts. And just  
16 so you know, and I won't go into it, but on page 4 of  
17 our motion we lay out a bunch of the statutes setting  
18 forth who looks at each of these determinations and  
19 whose responsibility it is.

20 THE COURT: Well, that's it. And if the plaintiff  
21 has been -- alleged that they've done what they are  
22 statutorily required to do, then that's not a good  
23 thing.

24 MR. HEWITT: Technically speaking.

1 THE COURT: All right. Wow, it's been 14 years.  
2 Okay. So nobody's in a hurry for this one. But I will  
3 set a date for status. My status date is June 16. Let  
4 me think.

5 Yeah. Okay. I'm going to set it for June 18.  
6 June 18 is for status. I may or may not have a decision  
7 or know when I could have a decision on this, but I'm  
8 going to set it for 9:30.

9 MR. HEWITT: Should we be prepared to have further  
10 discussion --

11 THE COURT: No.

12 MR. HEWITT: -- with you at that point?

13 THE COURT: No. If I have questions, I will be  
14 able to let you know what those questions are. But I do  
15 have to go through the statute. I'm assuming that  
16 there's enough information to understand those  
17 responsibilities. I do realize the Township structure  
18 is archaic and complicated, and some people have argued  
19 that we should get rid of them altogether, but that has  
20 not happened.

21 All right. Status on June 18, and that's  
22 on -- where I'm at on the decision.

23 MR. HEWITT: At what time, your Honor?

24 THE COURT: And that'll be at 9:30.

1 MR. HEWITT: Very good.

2 THE COURT: It may well be on that date I will have  
3 gone through it sufficiently to know that I cannot  
4 decide. If I decide I cannot decide it sooner, I'll let  
5 you know.

6 MR. MAHIEU: Okay.

7 THE COURT: Because it just may be that the issues  
8 you've raised can't be handled in this format.

9 MR. MAHIEU: Okay.

10 MR. HEWITT: Very well.

11 MR. MAHIEU: Thank you, your Honor.

12 MR. HEWITT: Thank you.

13 THE COURT: June 18.

14 (Which were all the proceedings had  
15 in the above-entitled cause.)  
16  
17  
18  
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21  
22  
23  
24

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF COOK )

4 Karen J. Bottenhagen, being first duly sworn,  
5 on oath says that she is a Certified Shorthand Reporter  
6 and Registered Professional Reporter, doing business in  
7 the City of Chicago, County of Cook and the State of  
8 Illinois;

9 That she reported in shorthand the proceedings  
10 had at the foregoing hearing;

11 And that the foregoing is a true and correct  
12 transcript of her shorthand notes so taken as aforesaid  
13 and contains all the proceedings had at the said  
14 hearing.

15 *Karen J. Bottenhagen*

16  
17 KAREN J. BOTTENHAGEN, CSR, RPR

18  
19 CSR No. 084-003806

20 SUBSCRIBED AND SWORN TO  
21 before me this 9th day of  
22 May, A.D., 2014.

23 *Laura Davis*



24 NOTARY PUBLIC



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