

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

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

Plaintiff-Counter Defendant, )

v. )

LYONS TOWNSHIP HIGH SCHOOL DIST. 204, )

Defendant-Counter Plaintiff. )

Case No. 13 CH 23386

Hon. Sophia H. Hall

**TOWNSHIP TRUSTEES' REPLY TO**  
**DISTRICT 204'S FIRST AMENDED AFFIRMATIVE DEFENSES**

Plaintiff and Counter-Defendant, Township Trustees of Schools Township 38 North, Range 12 East ("Township Trustees" or "TTO"), by its undersigned counsel, MILLER, CANFIELD, PADDOCK & STONE, P.L.C., for its Reply to the First Amended Affirmative Defenses filed by Defendant and Counter-Plaintiff, Lyons Township High School Dist. 204 ("District 204" or "LT"), states as follows:

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

**Reply:** Township Trustees lacks sufficient knowledge with respect to the allegations in the first two sentences. Township Trustees does not know District 204's mindset. Township Trustees denies the last sentence.



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

**Reply:** Township Trustees denies paragraph 2. Township Trustees affirmatively notes that the trustees are elected officials.

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

**Reply:** Township Trustees admits that District 204 had personnel performing various business functions. Township Trustees denies the remaining allegations of paragraph 3.

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

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

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

**Reply:** Township Trustees admits that Healy was the Treasurer during the relevant period, but denies the remaining allegations of paragraph 5.

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

**Reply:** Township Trustees admits that Healy sent District 204 an annual invoice for District 204's *pro rata* share. Township Trustees admits that the invoices were frequently for amounts in the range of \$150,000 to \$200,000. Township Trustees affirmatively notes that the Treasurer's functions and calculation of District 204's *pro rata* share is set by statute and that District 204 does not have an option under the statute of declining to pay its *pro rata* share merely because it does not "want or need to use" the Treasurer's office for certain functions. Township Trustees denies the remaining allegations within paragraph 6.

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

**Reply:** Township Trustees denies paragraph 7.

8. On May 28, 1999, Healy attended the meeting of the Finance Committee of the Board of Education for LT. According to the minutes, the Finance Committee "directed Mr.

Healy and Dr. Beckwith to work during the summer months to prepare options for the Board of Education to review that would provide more equity in the services provided the District.”

**Reply:** Township Trustees admits that Healy attended the referenced meeting and that the meeting minutes contain the quoted language. Township Trustees denies any remaining allegations with paragraph 8.

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

**Reply:** Township Trustees admits that the Board of Trustees held a regular meeting on July 27, 1999 and that the quoted language is contained in the meeting minutes. Township Trustees denies any remaining allegations within paragraph 9.

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

**Reply:** Township Trustees admits that Healy sent the referenced letter to Dr. Beckwith, that it is entitled as regarding the "Pro-Rata Billing System, and that the quoted language appears in the letter. Township Trustees denies the remaining allegations within paragraph 10.

11. The first proposal in the 8/18/1999 Letter was entitled "Deviation from Pro-Rata Billing." Healy said that the first proposal would involve LT not paying its pro rata share of the TTO's expenses, and having the other eleven member districts absorb LT's share. Healy represented that this proposal would require all twelve member districts to sign an intergovernmental agreement, which Healy said was "highly unlikely."

**Reply:** Township Trustees admits that the first proposal was so entitled, that paragraph 11 summarizes this proposal and that Healy advised it was "highly unlikely" the other district would agree to an intergovernmental agreement excusing District 204 from paying its *pro rata* share. Township Trustees denies any remaining allegations within paragraph 11.

12. The second proposal in the 8/18/1999 Letter was entitled "Funding by Township School Treasurer of Some District Functions." This was the proposal that Healy recommended to LT. Healy explained, "If the responsibilities for the Accounts Payable and Payroll production were returned to the School Treasurer's office [*i.e.*, the TTO] it would mean higher operating costs for the Treasurer's office in the form of salaries and benefits for increased staff and higher related expenses to accommodate the increase in work load."

**Reply:** Township Trustees admits that the second proposal was so entitled and that the quoted language appears in the letter. Township Trustees denies that Healy recommended this proposal to District 204 and denies any remaining allegations within paragraph 12.

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

**Reply:** Township Trustees admits that the quoted language appears in the letter. Township Trustees denies that Healy stated the Township Trustees was likely to approve the proposal, denies that the second proposal is materially different from the first proposal in its effect upon the other member districts, and denies any remaining allegations within paragraph 13. Township Trustees affirmatively notes that Healy advised that District 204 that the Trustees would need to approve any agreement, as opposed to Healy himself being able to approve any agreement.

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

**Reply:** Township Trustees admits that Healy stated in general terms the concept alleged. Township Trustees denies that Healy was correct in his legal analysis and denies any remaining allegations within paragraph 14.

15. The 8/18/1999 Letter contained three more proposals, none of which Healy recommended. The third was for the TTO to take over LT's business functions. The fourth was

to change the pro-rata billing system through legislative action. The fifth was for the TTO to use LT's computer system.

**Reply:** Township Trustees admits that the letter discussed three more proposals which are summarized generally in paragraph 15 and that Healy did not recommend any of these proposals. Township Trustees denies the suggestion that Healy recommended any of the proposals and denies any remaining allegations within paragraph 15.

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

**Reply:** Township Trustees lack sufficient knowledge to either admit or deny that Healy actually sent a copy of this letter to the Trustees. Township Trustees note they are indicated as CC recipients and Township Trustees do not contend that they did not receive the letter.

17. On September 29, 1999, the Finance Committee of LT met and considered Healy's written proposals. Healy was present at the meeting. The Finance Committee decided to proceed with the second proposal spelled out in Healy's letter, and asked Beckwith and Healy to work on a definitive agreement: "The committee directed Dr. Beckwith to work with Mr. Healy to further define the costs of the business office that can be charged to the Treasurer's office. These charges could include salaries for the accounts payable, payroll and computer services staff. Also an amount for computer processing was discussed. In addition to salaries, costs associated with reconciliation, printing of checks, audit, legal fees and office costs could also be transferred to the Treasurer's office. These costs would be included in the Treasurer's pro rata billing. Mr. Healy indicated the Township Board of Trustees is supportive of this method."

**Reply:** Township Trustees admits that the referenced meeting occurred and that Healy was present. Township Trustees admits that the quoted language appears in the meeting minutes. Township Trustees denies the remaining allegations within paragraph 17. Township Trustees affirmatively notes again that the minutes indicate Healy advised that the Trustees (as opposed to Healy himself) would have to approve any agreement.

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

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

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

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

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

**Reply:** Township Trustees admit that Dr. Beckwith sent the referenced memorandum to Healy and that paragraph 18 quotes from that document and summarizes part of it in a general sense. Township Trustees denies the remaining allegations within paragraph 18. Township Trustees affirmatively notes that the proposal is one being made by District 204, for one fiscal



year for a specific dollar amount, and that District 204 was proposing that Township Trustees would pay for the amount referenced.

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

**Reply:** Township Trustees admits that the Trustees held a regular meeting on March 21, 2000 and that the Agenda for that meeting so indicates. The Township Trustees does not deny that the meeting packet contains a copy of the referenced memorandum, but denies that the memorandum set forth a written agreement. Township Trustees deny any remaining allegations within paragraph 19.

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

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

**Reply:** Township Trustees admit that the quoted language appears in the meeting minutes. Township Trustees denies the remaining allegations within paragraph 20, including that Healy presented any "written agreement" to the Trustees, that the memorandum (which is not a

written agreement) was presented to the Trustees for their approval, and that Healy recommended the Trustees approve the proposal contained in the memorandum.

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

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

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

**Reply:** Township Trustees admit that the quoted language appears in the meeting minutes, but denies that this had the effect of approving the proposal from District 204. Township Trustees denies any remaining allegations within paragraph 21. Township Trustees affirmatively state that the minutes from this meeting additionally state that "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 the high school." Township Trustees further affirmatively state that these additional points were never again discussed.

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

**Reply:** Township Trustees admits that the Finance Committee met on March 22, 2000 and that the quoted language appears in the meeting minutes. Township Trustees deny the remaining allegations within paragraph 22.

23. On June 14, 2000, Beckwith wrote a memorandum to the Board of Education of LT. Beckwith explained the details of the implementation of the agreement with the TTO and provided copies of the key documents — including the TTO's pro rata expense invoice and the 2/2<sup>9</sup>/<sub>2</sub>000 Memo setting forth the terms of the agreement. Beckwith explained that the TTO's invoice was for \$165,476, and that the Treasurer would pay \$106,403 for the business functions at LT. Beckwith asked the Board to approve the agreement by authorizing the net payment to the TTO.

**Reply:** Township Trustees admits that Dr. Beckwith wrote the referenced memorandum and set forth the amounts indicates. Township Trustees denies the remaining allegations within paragraph 23. Township Trustees affirmatively notes that the meeting minutes do not reflect that Dr. Beckwith asked the District 204 Board of Education to approve any agreement. Rather, they reflect that she asked the Board of Education to approve a payment.

24. On June 19, 2000, the Board of Education of LT held a regular meeting. The agenda includes a line item for "P. Township Treasurer's Invoice." The minutes state that the Board received the "Township Treasurer's Invoice Exhibit T," which was a copy of Beckwith's June 14, 2000 memorandum. The Board approved the recommended handling of the TTO's pro rata invoice and the offset for the TTO's agreement to pay the costs of LT's business functions by a unanimous vote of all present Board members on the consent agenda.

**Reply:** Township Trustees admits that on June 19, 2000 the District 204 Board of Education held a regular meeting, that the agenda included the referenced line item, that the meeting minutes indicate as alleged, and that the Board of Education approved payment of the invoice through a unanimous vote on the consent agenda. Township Trustees denies the remaining allegations of paragraph 24 and specifically denies that District 204 voted to approve any contract with Township Trustees, which such contract had not, in fact, been approved by Township Trustees.

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

**Reply:** Township Trustees lack sufficient knowledge to either admit or deny when District 204 authorized the payment, but Township Trustees does not dispute that this payment was made. Township Trustees denies the remaining allegations within paragraph 25.

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

**Reply:** Township Trustees denies paragraph 26.

27. On September 7, 2000, Healy sent a letter to LT that expressly recognized that the TTO, in the 2001 fiscal year, would continue to operate under the parties' agreement in the same manner as in 2000: "As was done last year the Trustees will continue funding certain business

functions. Funding last year totaled \$106,403.00 (which brought the district's net payment to \$59,073.00)."

**Reply:** Township Trustees admits that Healy sent the referenced letter and that the language quoted appears in the letter. Township Trustees deny the remaining allegations within paragraph 27, deny that Healy had authority to send the letter, and deny that the Trustees ever approved the letter or approved any agreement respecting the 2001 and subsequent fiscal years.

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

**Reply:** Township Trustees admits that Healy sent the referenced letter, that the language quoted appears in the letter, and that it is correct that the Illinois School code does not permit variation from its statutorily-mandated formula. Township Trustees denies the remaining allegations within paragraph 28.

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

**Reply:** Township Trustees denies paragraph 29.

30. Each year from 2001 through 2012, the TTO and LT followed the same procedure to reaffirm their agreement on the TTO's payment of the costs of LT's business functions: Healy

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

**Reply:** Township Trustees denies paragraph 30.

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

**Reply:** Township Trustees denies the first sentence of paragraph 31. Township Trustees admits the second sentence of paragraph 31. Township Trustees affirmatively notes that in sending the letter, they were advising District 204 that to the extent any such agreement might lawfully exist it was being terminated. Township Trustees did not thereby agree that a lawful agreement had existed.

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

**Reply:** Township Trustees admits paragraph 32.

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

**Reply:** Township Trustees admits that the payments were knowing and intentional, *i.e.*, payment was not accidentally made. Township Trustees denies that the parties ever reached an agreement whereby Township Trustees entered into an agreement to make the payments and denies that it authorized paying for District 204's annual audit. Township Trustees affirmatively notes that the Illinois School Code requires that District 204 pay for its own annual audit and that all of the other school districts paid for their own annual audits.

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

**Reply:** Township Trustees admits that the Trustees voted to approve expenditures, which such expenditures included payment of District 204's annual audits. Township Trustees deny that the Trustees ever voted specifically to approve payment of District 204's annual audits. Rather, the Trustees approved expenditures on a more generalized level. Township Trustees denies any remaining allegations within paragraph 34.

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

**Reply:** Township Trustees denies the allegations of paragraph 35. Township Trustees does not deny that Healy stated this to District 204. Township Trustees affirmatively notes that Healy was incorrect.

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

**Reply:** Township Trustees lacks sufficient knowledge to either admit or deny whether District 204 accepted any such statement as truthful.

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

**Reply:** Township Trustees admits that it paid the cost of District 204's annual audit and that to its knowledge no such invoices were rejected for payment. Township Trustees denies any remaining allegations within paragraph 37.

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

**Reply:** Township Trustees admits the allegation respecting the identity of the accounting firm. Township Trustees denies the remaining allegations within paragraph 38.



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

**Reply:** Paragraph 39 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 39 can be deemed as containing factual allegations, such allegations are denied.

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

**Reply:** Paragraph 40 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 40 can be deemed as containing factual allegations, such allegations are denied.

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

**Reply:** Township Trustees admits paragraph 41.

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

**Reply:** Township Trustees denies paragraph 42.

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

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

**Reply:** Township Trustees lacks sufficient knowledge of what District 204 relied upon when formulating its budgets and allocating funds. Township Trustees denies any implicit allegations contained within paragraph 43.

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

**Reply:** Township Trustees admits that its payment of District 204's annual audits were treated as an expenditure of the TTO and should have been included on the annual *pro rata* invoices sent to member districts. Township Trustees admits that during the time period alleged, District 204's *pro rata* share was about twenty-five percent. Township Trustees affirmatively states that Healy did not include all expenses of the Treasurer's office on the *pro rata* invoices. Township Trustees further states that during the time period in question, District 204 did not pay its annual *pro rata* invoices, but rather paid some or none of such invoices. Township Trustees denies any remaining allegations within paragraph 44.

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

**Reply:** Township Trustees admits paragraph 45.

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

**Reply:** Township Trustees denies that it made "payments" to District 204 or other member districts and denies paragraph 46 on that basis. Township Trustees does not deny that it allocated investment interest to District 204 and the other member districts.

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

**Reply:** Township Trustees denies that it made "payments" and on that basis denies paragraph 47. Township Trustees does not deny that it allocated interest on a periodic basis that was typically quarterly.

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

**Reply:** Township Trustees denies paragraph 48.

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

**Reply:** Township Trustees lacks sufficient knowledge to admit or deny what District 204 was capable of calculating based on the information or documentation provided to District 204.

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

**Reply:** Township Trustees lacks sufficient knowledge to admit or deny what District 204 was capable of confirming based on the information or documentation provided to District 204.

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

**Reply:** Township Trustees lacks sufficient knowledge of what District 204 relied upon when formulating its budgets and allocating funds. Township Trustees denies any implicit allegations contained within paragraph 51.

#### **First Affirmative Defense- Laches**

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

**Reply:** Township Trustees incorporates by reference its replies to paragraphs 1-51.

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

**Reply:** Township Trustees denies paragraph 53.

54. These extraordinary circumstances include (a) entering into an agreement in 2000 with LT for the payment of LT's annual business functions, reaffirming that agreement every year from 2001 through 2012 with the approval of both boards, knowingly and intentionally accepting the agreed setoff against the pro rata invoice, and then — in 2013 — terminating the agreement and only then denying its existence or validity and seeking to recover 12 years of past payments to LT exceeding \$2 million; (b) making interest payments on investments to LT from 1995 to 2012, failing to provide LT with information or documentation sufficient to allow LT to confirm the accuracy of the amount, failing to keep sufficient records at the TTO to document the interest earnings, and then — in 2013 — claiming that the TTO overpaid interest to LT over a 17 year period and demanding the return of over \$1.5 million; and (c) knowingly, and without coercion or duress, paying for the annual audits of LT from at least 1992 through 2012, representing repeatedly to LT that the TTO was paying for the audits of the Other Districts, selecting for LT the auditor that performed the annual audits (for LT, the TTO, and the Other Districts), and then — in 2013 — claiming that its own payments for the past 20 years to Baker Tilly were improper and seeking the return of over \$500,000.

**Reply:** Township Trustees denies paragraph 54.

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

**Reply:** Township Trustees lacks sufficient knowledge of what District 204 relied upon when formulating its budgets, allocating resources and managing its public funds. Township Trustees denies any implicit allegations contained within paragraph 51.

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

**Reply:** Paragraph 56 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 56 can be deemed as containing factual allegations, such allegations are denied.

#### **Second Affirmative Defense – Statute of Limitations**

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

**Reply:** Township Trustees incorporates by reference its replies to paragraphs 1-51.

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

**Reply:** Paragraph 58 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 58 can be deemed as containing factual allegations, such allegations are denied.

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

**Reply:** Paragraph 59 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 59 can be deemed as containing factual allegations, such allegations are denied.

### **Third Affirmative Defense – Promissory Estoppel**

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

**Reply:** Township Trustees incorporate by reference its replies to paragraphs 1-51.

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

**Reply:** Paragraph 61 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 61 can be deemed as containing factual allegations, such allegations are denied.

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

**Reply:** Township Trustees admits that its position is that District 204 was legally required to pay for its own audit. Township Trustees denies the remaining allegations within paragraph 62.

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

**Reply:** Township Trustees admits that it wrongfully paid for District 204's annual audits. Township Trustees denies the remaining allegations of paragraph 63.

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

**Reply:** Township Trustees denies paragraph 64.

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

**Reply:** Township Trustees denies paragraph 65.

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



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

**Reply:** Township Trustees denies paragraph 66.

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

**Reply:** Township Trustees admits that its position is that any such agreement was not entered into in accordance with Illinois law and would have violated Illinois law to the extent such an agreement existed. Township Trustees denies the remaining allegations within paragraph 67.

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

**Reply:** Township Trustees denies paragraph 68.

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

**Reply:** Township Trustees denies paragraph 69.

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

**Reply:** Township Trustees denies paragraph 70.

71. During the relevant years, LT relied on TTO's promises to pay for LT's business functions to its detriment — if the TTO actually is able to avoid this agreement and reverse the parties' 12 year course of dealing. This detriment was based on the annual budgeting that LT conducted over the last 20 years; its deferral of efforts to remove itself from the archaic, corrupt, and unnecessary TTO system; its hiring, retention, and payment of the salaries and benefits of the many employees who performed LT's business functions during the relevant years; its decision not to use the business services of the TTO in light of the TTO's agreement with LT; and the disruption to LT's educational mission and its teachers, students, parents, and taxpayers that will result from the reversal of 12 years' worth of offsets exceeding \$2 million.

**Reply:** Township Trustees denies paragraph 71.

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

**Reply:** Paragraph 72 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 72 can be deemed as containing factual allegations, such allegations are denied.

#### **Fourth Affirmative Defense – Equitable Estoppel**

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

**Reply:** Township Trustees incorporates its replies to paragraphs 1-51.

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

**Reply:** Paragraph 74 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 74 can be deemed as containing factual allegations, such allegations are denied.

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

**Reply:** Township Trustees admits that its position is that it did not agree to pay for District 204's annual audits and that it would have been unlawful for Township Trustees to do so under the circumstances of this case, and that it paid for District 204's annual audit as a result of

invoices it received from the auditor. Township Trustees denies the remaining allegations within paragraph 75.

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

**Reply:** Township Trustees admits that its position is that any such agreement was not entered into in accordance with Illinois law and would have violated Illinois law to the extent such an agreement existed. Township Trustees denies the remaining allegations within paragraph 76.

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

**Reply:** Township Trustees denies paragraph 77.

78. The TTO, as detailed above, engaged in a pattern of conduct and communications over 20 years that (based on the TTO's current claims and positions taken in this case, and not necessarily on LT's positions or the factual record in this case) amounted to misrepresentation or concealments of material facts — namely, that the TTO would not abide by its agreement with LT to pay the annual audit costs; that the TTO did not have the ability to agree to pay for the

annual audit costs of LT; that the TTO did not pay for the annual audits of the other districts; that the TTO could or would deny the existence of this agreement and seek to recover these payments many years later; that the TTO would not abide by its agreement to pay for LT's business functions; that the Board of Trustees of the TTO in 2000 did not accept the proposal of LT on the payment of LT's business functions, and did not approve the expenditures of the TTO that included those payments during each subsequent year from 2001 to 2012; that the TTO was not willing to accept LT's annual offset for the cost of its business functions against the annual pro rata expenses invoice; that the payment of LT's annual audits costs and costs of business functions were illusory and misleading incentives for LT to remain in the TTO's jurisdiction; that the TTO did not maintain complete and proper records of its investment income; that the TTO did not pay the investment income to LT and the other districts as required; and that the TTO made incorrect and arbitrary payments paid to LT and other districts.

**Reply:** Township Trustees denies paragraph 78.

79. Under the circumstances alleged above, the TTO had at least implied knowledge of these actions and communications amounting to misrepresentations and concealments, and intended that LT would act on these misrepresentations and concealments. LT had no knowledge of the true facts (as the TTO now alleges them to be) and was innocent in its dealings with the TTO.

**Reply:** Township Trustees denies paragraph 79.

80. LT reasonably and in good faith changed its position and relied on the TTO's misrepresentations and concealments to its detriment, in that LT relied on the TTO's conduct and statements with respect to the annual audit costs, costs of business functions, and interest

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

**Reply:** Township Trustees denies paragraph 80.

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

**Reply:** Paragraph 81 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 81 can be deemed as containing factual allegations, such allegations are denied.

#### **Fifth Affirmative Defense – Waiver**

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

**Reply:** Township Trustees incorporates its replies to paragraphs 1-51.

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

**Reply:** Paragraph 83 contains an allegation of law to which it is not appropriate to respond.

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

**Reply:** Paragraph 84 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 84 can be deemed as containing factual allegations, such allegations are admitted.

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

**Reply:** Township Trustees does not understand the allegation that District 204 "never refused to pay its pro rata share," and on that basis lacks knowledge to either admit or deny the same. Township Trustees admits that while the District 204 Board of Education received and approved the annual invoices, District 204 did not pay the invoices in full for some years and did not pay the invoices at all in other years. Township Trustees denies any remaining allegations within paragraph 85.

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

**Reply:** Township Trustees denies paragraph 86.

87. To the extent that the TTO alleges that it had a legal right to receive LT's pro rata expense payments separate from the offsets for the costs of LT's business functions, and to the extent that the offsets were in any way improper or illegal, the TTO knowingly, and without coercion or duress, relinquished this right through its course of dealings and communications conducted with LT over a 12 year period.

**Reply:** Township Trustees denies paragraph 87.

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

**Reply:** Paragraph 88 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 88 can be deemed as containing factual allegations, such allegations are denied.

#### **Sixth Affirmative Defense – Unclean Hands**

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

**Reply:** Township Trustees incorporates its replies to paragraphs 1-51.



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

**Reply:** Paragraph 90 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 90 can be deemed as containing factual allegations, such allegations are denied.

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

**Reply:** Township Trustees admits it is seeking equitable relief. Township Trustees denies any remaining allegations within paragraph 91.

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

**Reply:** Township Trustees denies paragraph 92.

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

**Reply:** Paragraph 93 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 93 can be deemed as containing factual allegations, such allegations are denied.

#### **Seventh Affirmative Defense – Unjust Enrichment**

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

**Reply:** Township Trustees incorporates its replies to paragraphs 1-51.

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

**Reply:** Township Trustees admits that its position is that any such agreement was not entered into in accordance with Illinois law and would have violated Illinois law to the extent such an agreement existed. Township Trustees denies the remaining allegations within paragraph 95.

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

**Reply:** Paragraph 96 contains an allegation of law to which it is not appropriate to respond.

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

**Reply:** Township Trustees denies paragraph 97.

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

**Reply:** Township Trustees denies paragraph 98.

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

**Reply:** Township Trustees denies paragraph 99.

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

**Reply:** Township Trustees denies paragraph 100.

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

**Reply:** Paragraph 101 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 101 can be deemed as containing factual allegations, such allegations are denied.

#### **Eighth Affirmative Defense – Quantum Meruit**

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

**Reply:** Township Trustees incorporates its replies to paragraphs 1-51.

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

**Reply:** Township Trustees admits that its position is that any such agreement was not entered into in accordance with Illinois law and would have violated Illinois law to the extent such an agreement existed. Township Trustees denies the remaining allegations within paragraph 103.

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

**Reply:** Paragraph 104 contains an allegation of law to which it is not appropriate to respond.

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

**Reply:** Township Trustees denies paragraph 105.

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

**Reply:** Township Trustees denies paragraph 106.

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

**Reply:** Township Trustees denies paragraph 107.

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

**Reply:** Township Trustees denies paragraph 108.

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

**Reply:** Township Trustees denies paragraph 109.

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

**Reply:** Township Trustees denies paragraph 110.

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

**Reply:** Paragraph 111 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 111 can be deemed as containing factual allegations, such allegations are denied.

#### **Ninth Affirmative Defense – Voluntary Payment Doctrine**

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

**Reply:** Township Trustees incorporates its replies to paragraphs 1-51.

113. In accordance with the voluntary payment doctrine, money voluntarily paid under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered by the payor solely because the claim was illegal. Absent fraud,

coercion, or mistake of fact, monies paid under a claim of right to payment but under a mistake of law are not recoverable.

**Reply:** Paragraph 113 contains an allegation of law to which it is not appropriate to respond.

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

**Reply:** Township Trustees denies paragraph 114.

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

**Reply:** Paragraph 115 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 115 can be deemed as containing factual allegations, Township Trustees denies that it decided "to pay for the costs of LT's business functions" and denies any remaining allegations of fact within paragraph 115.

116. During the period 1992 through 2012, LT made claims for payment several times a year in form of invoices that either LT or Baker Tilly submitted to the TTO for work on LT's annual audit. Those periodic claims included a description of the work that Baker Tilly

performed, and the fact that the work was for LT's annual audit. With full knowledge of the relevant facts, the TTO several times a year during that period made payment on LT's claims by sending payment in full to Baker Tilly on the invoices.

**Reply:** Township Trustees admits that it paid Baker Tilly's invoices, received from whatever source, for District 204's annual audit and that such invoices reflected it was for District 204's annual audit. Township Trustees denies any remaining allegations within paragraph 116.

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

**Reply:** Paragraph 117 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 117 can be deemed as containing factual allegations, Township Trustees denies that it decided "to pay for the costs of LT's annual audits" and denies any remaining allegations of fact within paragraph 117.

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



**Reply:** Township Trustees admits that it created journal entries whereby interest income was allocated to District 204. Township Trustees admits that Healy and District 204 had communications regarding investments and interest earnings. Township Trustees admits that at times District 204 specifically requested that Healy allocate it additional interest and that Healy did so unlawfully. Township Trustees denies any remaining allegations within paragraph 118.


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

**Reply:** Paragraph 119 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 119 can be deemed as containing factual allegations, Township Trustees denies that it "paid" interest to District 204, but does not deny it made journal entries allocation interest to District 204. Township Trustees denies any remaining allegations within paragraph 119.

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

**Reply:** Paragraph 120 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 120 can be deemed as containing factual allegations, such allegations are denied.

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

By:   
One of Its Attorneys

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

Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that (s)he verily believes the same to be true.

Sam B. Korman 4/27/17  
Date

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

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

Plaintiff-Counter Defendant,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendant-Counter Plaintiff.

Case No. 13 CH 23386

Hon. Sophia H. Hall

NOTICE OF FILING

TO: Jay R. Hoffman/Hoffman Legal  
20 N. Clark Street, Suite 2500  
Chicago, IL 60602

PLEASE TAKE NOTICE that on April 28, 2017, I have filed with the Clerk of the Circuit Court of Cook County, Illinois, the following: **Township Trustees' Reply to District 204's First Amended Affirmative Defenses**, a copy of which is hereby attached and served on you.

Respectfully,

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

By: 

One of Its Attorneys

Gerald E. Kubasiak  
Barry P. Kaltenbach  
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Firm No. 44233


### PROOF OF SERVICE

The undersigned, an attorney, certifies that a copy of the following document, **Township Trustees' Reply to District 204's First Amended Affirmative Defenses**, has been served upon:

Jay R. Hoffman  
Hoffman Legal  
20 N. Clark Street, Suite 2500  
Chicago, IL 60602

as follows:

	by personal service on April 28, 2017 before 4:00 p.m.
	by U.S. mail, by placing the same in an envelope addressed to them at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 225 W. Washington Street, Chicago, Illinois, on April 28, 2017 before 4:00 p.m.
	by facsimile transmission from 225 W. Washington Street, Suite 2600, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 460-4201, consisting of ____ pages on April 28, 2017 before 4:00 p.m., the served [party/parties] having consented to such service.
	by Federal Express or other similar commercial carrier by depositing the same in the carrier's pick-up box or drop off with the carrier's designated contractor on April 28, 2017 before the pickup/drop-off deadline for next-day delivery, enclosed in a package, plainly addressed to the above identified individual[s] at [his/her/their] above-stated address[es], with the delivery charge fully prepaid.
X	by electronic mail, on April 28, 2017 before 5:00 p.m., the served [party/parties] having consented to such service.

  
\_\_\_\_\_  
Gerald E. Kubasiak, attorney