

**IN THE COURT OF COMMON PLEAS OF
DAUPHIN COUNTY, PENNSYLVANIA**

MILTON PURCELL, et. al.,	:	CIVIL DIVISION
PLAINTIFFS	:	
	:	NO. 2005-CV-0463-EQ
	:	
v.	:	
	:	
MILTON HERSHEY SCHOOL	:	COMPLAINT IN EQUITY
ALUMNI ASSOCIATION, JOHN RICE	:	
AND JERRY WATERS,	:	
DEFENDANTS	:	

**DEFENDANTS ANSWER AND NEW MATTER TO
PLAINTIFFS' COMPLAINT IN EQUITY**

Defendants, Milton Hershey Alumni Association (“MHSAA” or the “Association”), John Rice (“Rice”) and Jerry Waters (“Waters”), (collectively referred to as “Defendants”) hereby file the following Answer and New Matter to the Plaintiffs’ Complaint in Equity (“Complaint”) as follows:

I. INTRODUCTION

1. ADMITTED in part and DENIED in part. It is ADMITTED that the Milton Hershey School Alumni Association (“MHSAA”) is a Pennsylvania non-profit corporation and that certain MHSAA Board of Directors (“Board”) meetings took place on November 14, 2004, December 19, 2004, and December 26, 2004. The rest of the paragraph is DENIED.

II. PARTIES

2. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED as stated. By way of further response, plaintiff Milton Purcell was a 2004 Director only in so far as the MHSAA Chapter he represents, the Homestead Chapter, elected him to serve as Chapter Representative, which was less than the full year. Purcell was also selected by the Homestead Chapter to serve as the 2005 Chapter Representative , in a Chapter Representative election that took place some time after the November 14, 2004 MHSAA Board meeting at issue in this proceeding. Purcell should have faced a Chapter Representative election for the 2005 position in advance of the November 14, 2004 meeting, but blocked this election at the Chapter meeting where it was scheduled to occur out of concern that he did not, on that night, have the necessary votes to secure the position, as the turnout for the meeting was greater than he and those working with him expected. Seeing that turnout, Purcell and those working with him simply declared “five of us just had a special meeting upstairs” and claimed that this meant they did not have to conduct the regularly scheduled Chapter Representative election that night. Subsequently, Purcell and those working with him lined up the necessary votes to secure the position for Purcell, and only then conducted the 2005 Chapter Representative election, which occurred after the November 14, 2004 MHSAA Board meeting. To the extent that the paragraph implies that Purcell’s service as a Director is unqualified, it is DENIED.

3. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED. By way of further response, plaintiff Ethel Campbell, as a non-graduate and non-attende of the Milton Hershey School, is prohibited by the MHSAA By-Laws from serving on the MHSAA Board as a Director.

4. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED as stated. By way of further response, it is ADMITTED that plaintiff Graham McIntyre was a member of the 2004 MHSAA Board as the Chapter Representative for the Washington D.C. Chapter. It is DENIED that he is a member of the 2005 Board in any capacity. McIntyre and those working with him have refused to conduct any Washington D.C. 2005 Chapter Representative election in an effort to prevent anyone else from replacing McIntyre in a genuine vote. Instead, a sham election was held on the 2005 position, with no one being permitted to run against McIntyre, and thus leaving the few Chapter members who even participated in the vote with a choice between McIntyre and abstaining. McIntyre has worked for over two years to frustrate the work of the MHSAA Board, to interfere with its efforts to achieve structural reform of the Hershey Trust, and to otherwise carry out its day-to-day business.

5. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED. By way of further response, the MHSAA By-Laws do not authorize the Emeritus Director Board position claimed by plaintiff Ivan Dietrich. To the extent that such authorization could be construed somewhere in the By-Laws, Dietrich's term of service would not be for life as he has claimed, but for one-year, pursuant to Pennsylvania law, and thereby concluding in 1999, one year after he was purportedly designated to this position. Deitrich has worked for over two years to frustrate the work of the MHSAA Board, to interfere with its efforts to achieve structural reform of the Hershey Trust, and to otherwise carry out its day-to-day business.

6. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED. By way of further response, the MHSAA By-Laws do not authorize the Emeritus Director Board position claimed by plaintiff Ralph Fink. To the extent that such authorization could be construed somewhere in the By-Laws, Fink's term of service would not be for life as he has claimed, but for one-year, pursuant to Pennsylvania law, and thereby concluding in 1989, one year after he was purportedly designated to this position. Fink has not attended a single MHSAA Board meeting nor otherwise advanced any of its programs or functions in eight years, until his purported proxy was introduced at the November 14 2004 Board meeting, as further described below.

7. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second is DENIED. By way of further response, the MHSAA By-Laws do not authorize the Emeritus Director Board position claimed by plaintiff Harvey Deitrich. To the extent that such authorization could be construed somewhere in the By-Laws, Deitrich's term of service would not be for life, as he has claimed, but for one-year, pursuant to Pennsylvania law, and thereby concluding in 1998, one year after he was purportedly designated to this position.

8. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED as stated. To the extent that the paragraph implies that Gaughan's service as a Director in 2005 is unqualified it is DENIED. It is DENIED that Gaughan was elected Secretary of MHSAA for 2005. By way of further response, Gaughan was one of four at-large Directors who received the top number of votes in the 2004 Director election, all of whom are members of the Homestead Chapter, and all of whom were improperly endorsed by a mass-mailing sent out in violation of MHSAA rules by the President of the Homestead Chapter

working together with plaintiff Purcell. Gaughan, who seeks by this lawsuit to obtain a position as an Officer on the MHSAA Board's Executive Committee, has worked for two years to frustrate the work of the MHSAA Board, to interfere with its efforts to achieve structural reform of the Hershey Trust, and to otherwise carry out its day-to-day business.

9. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED. By way of further response, Harry Heath is an employee of MHS and has played no role whatsoever in MHSAA affairs nor run for the MHSAA Board in recent history, and did not attend the November 14, 2004 meeting where the 2005 MHSAA Officers were selected, and where plaintiffs claim that Heath became the Treasurer. Heath has no knowledge or experience of any of MHSAA's current day-to-day matters, the current duties of the Executive Committee, or the MHSAA efforts to achieve structural reforms that are central to MHSAA's recent work. Heath is also a member of the Homestead Chapter, the conduct of which Chapter is at issue here.

10. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED as stated. To the extent that the paragraph implies that Patton's service as a 2005 Director is unqualified it is DENIED. By way of further response, Patton was one of four at-large Directors who received the top number of votes in the 2004 Director election, all of whom are members of the Homestead Chapter, and all of whom were improperly endorsed by a mass-mailing sent out in violation of MHSAA rules by the President of the Homestead Chapter working together with plaintiff Purcell.

11. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED as stated. To the extent that the paragraph implies that (Gerald)

Long's service as a 2005 Director is unqualified it is DENIED. By way of further response, (Gerald) Long was one of four at-large Directors who received the top number of votes in the 2004 Director election, all of whom are members of the Homestead Chapter, and all of whom were improperly endorsed by a mass-mailing sent out in violation of MHSAA rules by the President of the Homestead Chapter working together with plaintiff Purcell.

12. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. The second sentence is DENIED as stated. To the extent that the paragraph implies that Via's service as a 2005 Director is unqualified it is DENIED. By way of further response, Via was one of four at-large Directors who received the top number of votes in the 2004 Director election, and all of whom were improperly endorsed by a mass-mailing sent out in violation of MHSAA rules by the President of the Homestead Chapter working together with plaintiff Purcell.

13. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. It is ADMITTED that Mattis was elected to serve as an at-large MHSAA Director in 2003 for a three-year term that concludes at the end of 2006. To the extent that the paragraph implies that Mattis' service as a Director is unqualified it is DENIED. By way of further information, Mattis is also a member of the Homestead Chapter, the conduct of which Chapter is at issue here. Mattis has worked for two years to frustrate the work of the MHSAA Board, to interfere with its efforts to achieve structural reform of the Hershey Trust, and to otherwise carry out its day-to-day business.

14. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. It is ADMITTED that Cook was elected to serve as an at large MHSAA Director in 2003 and that her term concludes at the end of 2006. To the extent that the paragraph implies that Cook's service

as a Director is unqualified it is DENIED. By way of further information, Cook is also a member of the Homestead Chapter, the conduct of which Chapter is at issue here.

15. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. It is ADMITTED that Heist was elected to serve as an at-large MHSAA Director for a three-year term in 2002 and that his term expires at the end of 2005. To the extent that the paragraph implies that Heist's service as a Director is unqualified it is DENIED. By way of further response, Heist has worked for two years to frustrate the work of the MHSAA Board, to interfere with its efforts to achieve structural reform of the Hershey Trust, and to otherwise carry out its day-to-day business.

16. ADMITTED.

17. ADMITTED.

18. ADMITTED in part and DENIED in part. The first sentence is ADMITTED. It is ADMITTED that Waters was chosen in 2003 by the 2004 Directors as the 2004 MHSAA Vice President/President-Elect and the 2005 MHSAA President pursuant to MHSAA By-Laws provision for selecting the current-year Vice-President/President-Elect and the next-year President. It is ADMITTED that Waters is a member of the 2004 and 2005 Boards. To the extent that the rest of the paragraph calls for response it is DENIED.

III. OTHER BOARD MEMBERS AND PURPORTED OFFICERS

19. ADMITTED in part and DENIED in part. It is ADMITTED that Charles Welsh was elected as an at-large MHSAA Director to a three-year term in 2002 and is a member of the 2004

and 2005 Board. It is ADMITTED that Welsh was selected in 2004 by the 2005 Directors to serve as the 2005 Vice President/President-Elect and the 2006 President pursuant to the MHSAA By-Law provision for selecting the current-year Vice-President/President-Elect and the next-year President. To the extent that the rest of the paragraph calls for response it is DENIED.

20. ADMITTED. By way of further response Donald Chappell was elected as an at-large Director in 2003 for a three-year term that expires at the end of 2006.

21. ADMITTED. By way of further response John Long was elected as an at-large Director in 2003 for a three-year term that expires at the end of 2006.

22. ADMITTED. By way of further response Sonny Jenkins was elected as an at-large Director in 2002 for a three-year term that expires at the end of 2005.

23. ADMITTED in part and DENIED. It is ADMITTED that Alan Greer was a 2004 Director and is a 2005 Director as the representative of the Lancaster Chapter. To the extent that paragraph implies anything beyond this requiring response it is DENIED.

24. ADMITTED in part and DENIED. It is ADMITTED that George Russ was a 2004 Director and is a 2005 Director as the representative of the Delaware Valley Chapter. To the extent that paragraph implies anything beyond this requiring response it is DENIED.

25. ADMITTED in part and DENIED as stated in part. It is ADMITTED that Chuck Hill was a 2004 Director, serving out the remaining term of a physically incapacitated Director. It is ADMITTED that Chuck Hill is a 2005 Director as a representative of the New York Chapter. To the extent that the paragraph implies anything beyond this it is DENIED.

26. ADMITTED in part and DENIED as stated in part. It is ADMITTED that Robert Chalmers was a 2004 Director serving out the remainder of his elected three-year term. It is ADMITTED that Chalmers is a 2005 Director as a representative of the Philadelphia Chapter. To the extent that the paragraph implies anything beyond this it is DENIED.

27. ADMITTED in part and DENIED as stated in part. It is admitted that Ruben Rodriguez served as a Director during part of 2004 as the representative of the New York Chapter. It is DENIED that Ruben Rodriguez is a 2005 Director. To the extent that the paragraph implies anything beyond this it is DENIED. By way of further information, Rodriguez served out the term of New York Chapter Representative Victoria Bond who lost a family member late in the year and thus asked to be relieved of her duties.

28. ADMITTED in part and DENIED in part. It is admitted that Brian Russell served as a Director during 2004 as the representative of the Harrisburg Chapter. It is admitted that Russell is a 2005 Director as the representative of the Harrisburg Chapter. To the extent that the paragraph implies anything beyond this it is DENIED.

29. ADMITTED. By way of further response Francine Serafin was elected as an at-large Director in 2002 for a three-year term that expires at the end of 2005.

30. ADMITTED in part and DENIED in part. It is ADMITTED that Christopher Ortiz is the MHSAA 2005 Secretary. To the extent that the paragraph implies anything beyond this it is DENIED. By way of further response, Ortiz was chosen by the 2005 Directors as the 2005 Secretary in a 10-8 vote.

31. ADMITTED in part and DENIED in part. It is ADMITTED that James Behrens is the MHSAA 2005 Treasurer. To the extent that the paragraph implies anything beyond this it is DENIED. By way of further response, Behrens was chosen by the 2005 Directors as the 2005 Secretary in a 10-8 vote.

IV. BACKGROUND

32. ADMITTED in part and DENIED in part. It is ADMITTED that MHSAA is a non-profit corporation. It is ADMITTED that MHSAA has membership categories that include honorary and associate status. It is DENIED that MHSAA has over 6,000 members. To the extent that this paragraph implies that non-alumni are afforded the same status as alumni within MHSAA it is DENIED. To the extent that the paragraph otherwise requires response it is DENIED. By way of further response, the number of alumni is in flux and is not exactly known, but is believed to be approximately 5,500.

33. ADMITTED. By way of further response, the By-Laws essentially call for annual additions to the Board of at-large elected Directors, who are elected by the members at-large for three-year terms, in order to maintain a Board that has at least half its members so chosen. These at-large Directors are distinguished from Directors who are Chapter Representatives chosen by the Chapters, or who are Officers chosen by the Board. The number of Directors to be chosen in any given year in the at-large election is thus determined by seeing how many at-large Directors are scheduled to leave the Board in that year, how many at-large Directors will remain, and then calculating the number of additions required to maintain the requisite minimum ratio of at least half the Board being chosen in the at-large annual elections. This assures that the 5,500 or more MHSAA members will always select at least half the Board. It also prevents the concentration

of Board seats in any one geographic location, since each Chapter can only elect one Director to the Board. In the 2004 Director election, all four Directors were chosen from one Chapter, the Homestead Chapter, thus concentrating a bloc of at-large votes in that Chapter's hands. Further, this election sweep was achieved in part by the unauthorized use of the alumni mailing database by plaintiff Purcell (of the Homestead Chapter) and Homestead Chapter President Jim Gould, who mass-mailed endorsements of their preferred slate of candidates, all of whom won. This mass-mailing was misleading in material ways and is among the primary issues of contention in this proceeding. Gould has refused to disclose how he obtained the alumni mailing database.

34. ADMITTED in part and DENIED in part. It is ADMITTED that there are currently 12 Directors purportedly elected by the membership to the MHSAA Board. To the extent that the paragraph implies anything beyond this it is DENIED. To the extent that the phrase "at all relevant times" is ambiguous it is DENIED. By way of further response, in 2004 there were 12 Directors serving on the Board who in that year were serving terms as Directors elected by the membership at large in annual Director elections, namely, Rice, Chalmers, Ortiz, Hill (completing the term of another at-large Director who resigned due to illness), Heist, Jenkins, Serafin, Welsh, Cook, Chappell, (John) Long, and Mattis. In 2005, there are 8 carry overs from this group (Heist, Jenkins, Serafin, Welsh, Cook, Chappell, (John) Long, and Mattis) and 4 (all from the Homestead Chapter) who were chosen in 2004 by means of the MHSAA rule violations at issue in this matter (Gaughan, (Gerald) Long, Patton, and Via). To the extent that the paragraph implies anything beyond this it is DENIED.

35. ADMITTED in part and DENIED in part. The answer to paragraph 34 is incorporated herein by reference.

36. ADMITTED in part and DENIED in part. It is ADMITTED that the By-Laws establish procedures for creating MHSAA Chapters. It is ADMITTED that the By-Laws provide for Chapter members to elect a Chapter Representative to serve as a Director. By way of further response, Article X, Section 1 of the By-Laws explicitly reserves to the MHSAA Board the right to “set forth the procedures for organizing” Chapters while Article X, Section 9 mandates that Chapters “shall function in accordance with any regulations set forth by the Board of Directors.” To the extent that the paragraph implies anything beyond this it is DENIED.

37. ADMITTED in part and DENIED in part. It is ADMITTED that the names of the MHSAA Chapters are Homestead, Lancaster, Delaware Valley, Harrisburg, New York, Philadelphia and, and Washington D.C. It is DENIED that there is an Honorary Chapter within the By-Laws. To the extent that the paragraph implies anything beyond this it is DENIED.

38. ADMITTED in part and DENIED in part. It is ADMITTED that in 2005 Brian Russell, Al Greer, George Russ, Robert Chalmers, Charles Hill, and Milton Purcell are currently Chapter Representatives. It is DENIED that Ethel Campbell or Graham McIntyre are Chapter Representatives. To the extent that the paragraph implies anything beyond this it is DENIED. By way of further response, the answer from paragraph 4 is incorporated here by reference.

39. ADMITTED in part and DENIED in part. It is ADMITTED that a person properly serving as a “Director Emeritus” within the By-Laws is a Director. To the extent that the paragraph implies that defendant John Rice is an Emeritus Director permitted within the By-Laws, the paragraph is ADMITTED. To the extent the paragraph implies that any other persons, or more than one person, is an Emeritus Director, the paragraph is DENIED. To the extent that the paragraph implies that the By-Laws authorize the selection by the Board of any so-called

“Emeritus Director” the paragraph is DENIED. To the extent that the paragraph implies that Article V, Section 2 uses the phrase “Director Emeritus” in regard to anyone other than the Past President, who is in fact a true “Emeritus Director” serving by virtue of his past office as the immediate year’s President, the paragraph is DENIED. To the extent that the paragraph implies that any Director is permitted to vote on any matter without qualification the paragraph is DENIED. To the extent that the paragraph implies anything beyond this it is DENIED. By way of further response, the By-Laws make no provision for “Emeritus Directors” in the manner claimed by plaintiffs for Fink, Dietrich, and Deitrich, i.e., as a special category of Director other than those elected by the at-large membership, the Officers, the Chapter Representatives, and the Past President. Rather, the By-Laws authorize no such special category of Directors, but instead restrict the one “Emeritus” position to the sole Director so designated within the By-Laws, the Past President, who serves as a Director Emeritus by virtue of his past office.

40. DENIED. By way of further response the response from paragraph 39 is incorporated herein.

41. ADMITTED in part and DENIED in part. It is ADMITTED that the Officers of the Association serve as Directors and that they are presently the President, Vice-President/President-Elect, Treasurer, and Secretary. It is DENIED that the Officers currently include an Assistant Secretary/General Counsel. It is DENIED that the Past President is an Officer. To the extent that the paragraph implies anything beyond this it is DENIED. By way of further response, the By-Laws do not require the filling of all Officer positions and currently there is no Assistant Secretary/General Counsel. The Officers are explicitly listed in Article V Section 2 and do not include the Past President.

42. It is ADMITTED that the paragraph accurately reproduces a passage of the By-Laws. To the extent that the paragraph implies any misconstruction of the By-Laws the paragraph is DENIED.

43. It is ADMITTED that the paragraph accurately reproduces a passage of the By-Laws. To the extent that the paragraph implies any misconstruction of the By-Laws the paragraph is DENIED.

44. It is ADMITTED that the paragraph accurately reproduces a passage of the By-Laws. To the extent that the paragraph implies any misconstruction of the By-Laws the paragraph is DENIED.

IV. MEETING OF NOVEMBER 14, 2004

45. ADMITTED in part and DENIED in part. It is ADMITTED that a meeting during which the 2005 MHSAA Officers other than President were elected was held on November 14, 2004. To the extent that the paragraph implies anything beyond this it is DENIED.

46. DENIED. By way of further response, there were only 23 Directors on the 2004 Board of whom 19 attended in person (Rice, Fouad, Waters, Berning, Behrens, Ortiz, Hill, Heist, Jenkins, Welsh, Cook, Chappell, Mattis, Purcell, Russell, Greer, Russ, and McIntyre), 4 submitted proxies (Chalmers, (John) Long, Bykowski, and Bond), and 1 (Serafin) was absent. The Board had earlier had 24 members, but Secretary Virgil Whitsett had resigned from the Board in mid-term after being continuously badgered by certain plaintiffs.

47. ADMITTED in part and DENIED in part. It is ADMITTED that plaintiffs Gaughan, Patton, (Gerald) Long, and Via attended the November 14, 2004 meeting. It is ADMITTED that these plaintiffs were purportedly elected by the membership in an election where MHSAA rules prohibiting use of the mailing list were violated in a manner that gave them unfair advantage over candidates who did not have the benefit of such use of the mailing list. To the extent that the paragraph implies anything beyond this it is DENIED. By way of further response, there were other 2005 Directors in attendance for purposes of only 2005 business, or who were voting as 2004 Directors in one capacity, and on 2005 matters in a different capacity, due to Chapter Representative changes that resulted from properly conducted Chapter Representative election results. Chuck Hill voted on 2005 matters as the New York Chapter Representative, replacing Victoria Bond, whose term was to expire at the end of 2004. Bob Chalmers voted on 2005 matters as the Philadelphia Chapter Representative, replacing Jim Bykowski, whose term expired at the end of 2004. Since Chapter Representative elections were intentionally blocked by persons seeking to negate the wishes of members in the Homestead and Washington D.C. Chapters, these Chapters did not have any 2005 Chapter Representative present at the meeting for purposes of 2005 business, though they did have 2004 Chapter Representatives present and who did participate in 2004 business.

48. ADMITTED.

49. ADMITTED in part and DENIED in part. It is ADMITTED that during the November 14, 2004 meeting the refusal by the Homestead Chapter, the Washington D.C. Chapter, and the purported Honorary Chapter to hold proper Chapter Representative elections for the 2005 Chapter Representative/Director positions and purported Chapter

Representative/Director position was discussed by the Board. It is ADMITTED that as a result of their refusal to hold 2005 Chapter Representative elections, these Chapters and purported Chapter did not have 2005 Chapter Representatives in attendance at the November 14, 2004 Board meeting for purposes of any 2005 matter, since By-Laws Article V, Section 7(a) specifically restricts voting on 2005 matters to the new (2005) Board. It is ADMITTED that this was by decision of the Board. It is DENIED that the vote on this decision was 15-10. To the extent that the paragraph implies anything beyond this it is DENIED. By way of further information, the vote tally was 15-11, of which it was later learned 4 votes were outside of the By-Laws and thus the actual tally was 15-7. The 15 votes were those of Rice, Fouad, Berning, Behrens, Chalmers, Ortiz, Hill, Jenkins, Welsh, Chappell, (John) Long (by proxy), Greer, Russ, Bykowski (by proxy), and Bond (by proxy). The 7 proper votes were cast by Waters, Heist, Cook, Mattis, Purcell, Russel, McIntyre. The 4 improper votes were cast by Fink (by proxy), Deitrich (by proxy), Dietrich, and Campbell.

50. ADMITTED in part and DENIED in part. It is ADMITTED that Francine Serafin is an at-large elected member of the 2004 and 2005 Boards. It is ADMITTED that Rice presided over the November 14, 2004 meeting. It is ADMITTED that Rice was questioned about Serafin's participation by telephone in the meeting. It is DENIED that Serafin "requested in writing to 2004 President, defendant John Rice, that she be allowed to participate by telephone." The statement that "Rice made no effort to allow her to participate by telephone and excluded her from the meeting" is DENIED. MHSAA has no basis for knowing whether Serafin was unable to attend the November 14, 2004 meeting and therefore it is DENIED that she was unable to attend. The last sentence mischaracterizes what was said by Rice in that it implies his denial

was an intentional misstatement as opposed to mere oversight and as such is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, Serafin was called several times during the meeting and was not available. Had Serafin been available when she was called she would in fact have been able to participate by telephone. Serafin's own actions and inadequate efforts to participate by telephone prevented her participation rather than any action of Rice being the cause. Serafin took no affirmative steps to confirm that any arrangements would be made for her participation by telephone during the November 14, 2004 MHSAA Board meeting nor did Rice give any indication whatsoever that he would be making such arrangements. Serafin did not make any attempt at all to contact anyone present at the meeting, whether the MHSAA office, Rice or any other Director. Although calls were placed to Serafin's residence during the meeting Serafin was not available. Although Directors who seek to participate by telephone in MHSAA Board meetings frequently designate proxies as back-up to technical problems or other difficulties, Serafin did not take that measure for this meeting.

51. ADMITTED in part and DENIED in part. It is ADMITTED that Jerry Waters was elected to serve as an at-large Director for a three-year term beginning in 2001. It is ADMITTED that Waters served on the 2004 Board as Vice-President/President-Elect. It is DENIED that Waters' term of service ended on December 31, 2003. It is DENIED that Waters was replaced. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, under Article IV, Section 4 of the By-Laws, the person chosen as President is explicitly excepted from the Article IV, Section 3 one-year prohibition on continuing as a Director upon expiration of an at-large Director's three-year term. In the third year of

Waters' three-year term, i.e., 2003, he was chosen by the 2004 Board as the 2005 President in the same vote that chose him as the 2004 Vice-President/President-Elect, because that is how MHSAA's By-Laws work; i.e., the By-Laws provide that in one vote, a Vice-President/President-Elect for one year's Board is chosen and the President for the subsequent year's Board is also chosen, with one individual being chosen for the two positions in the same instance. This is done for the sake of Board continuity and stability, allowing the President succession line to be clearly established. Article V, Section 4 explicitly states, "The Vice President/President Elect shall then succeed to the presidency upon the expiration of the term of the previous president." By virtue of these provisions when construed together, Waters' term continued as an Officer in 2004 and 2005 because his selection as the 2005 President placed him squarely within the Article IV, Section 4 exception.

52. ADMITTED in part and DENIED in part. It is ADMITTED that the Board conducted a meeting on November 14, 2004 at which the 2005 Vice-President/President-Elect, Secretary, and Treasurer Officer elections were conducted. The rest of the paragraph, to the extent that it requires response, is DENIED.

53. ADMITTED in part and DENIED in part. It is ADMITTED that Chuck Welsh was elected Vice-President/President-Elect. It is ADMITTED that Waters, Russell, Chappell, (John) Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers, and Hill voted in favor of Welsh. It is ADMITTED that plaintiffs Heist, Mattis, Cook, Patton, (Jerry) Long, Via, and Gaughan voted against Welsh to the extent that they were permitted to vote. It is ADMITTED that plaintiffs Purcell, Campbell, and McIntyre were not permitted to vote. It is DENIED that Serafin was excluded from the vote for the reasons set forth in paragraph 50. It is DENIED that plaintiffs

Deitrich, Dietrich, and Fink were entitled to vote or cast proper votes. Defendants cannot ascertain how Purcell, Campbell, McIntyre, and Serafin would vote so the last sentence is DENIED. It is DENIED that the vote approving Welsh was 11 to 10. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, the final tally on the vote approving Welsh was 11 to 7, it being learned after the meeting that the votes of Deitrich, Dietrich, and Fink were outside the By-Laws and thus improperly counted, they having not been MHSAA Directors.

54. ADMITTED in part and DENIED in part. It is ADMITTED that a purported motion to elect Gaughan as Secretary was conducted. It is ADMITTED that Waters, Chappell, (John) Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers, and Hill cast votes against Gaughan in that purported motion. It is ADMITTED that plaintiffs Heist, Mattis, Cook, Patton, (Jerry) Long, Via, and Gaughan cast votes in favor of Gaughan. It is ADMITTED that plaintiffs Purcell, Campbell, and McIntyre were not permitted to cast any vote on the purported motion. It is DENIED that Serafin was excluded from the vote for the reasons set forth in paragraph 50. It is DENIED that plaintiffs Deitrich, Dietrich, and Fink were entitled to vote or cast proper votes. Defendants cannot ascertain how Purcell, Campbell, McIntyre, and Serafin would vote so the last sentence is DENIED. It is DENIED that Gaughan was apparently elected Secretary. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, an earlier motion approving Ortiz as Secretary was erroneously thought to have failed by an 11-10 vote when three votes were included in the tally for persons who have no Director status within the By-Laws, i.e., Deitrich, Dietrich, and Fink, and whose votes were thereafter deducted from the tally. This meant that the motion to name Ortiz as Secretary had carried 10-8 and that the

motion on Gaughan was thus premised on a misunderstanding, failing anyway since the three improper votes were also cast on that motion.

55. ADMITTED in part and DENIED in part. It is ADMITTED that a purported motion to elect Heath as Treasurer was conducted. It is ADMITTED that Waters, Chappell, (John) Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers and Hill cast votes against Heath in that purported motion. It is ADMITTED that plaintiffs Heist, Mattis, Cook, Patton, (Jerry) Long, Via, and Gaughan cast votes in favor of Heath. It is ADMITTED that plaintiffs Purcell, Campbell, and McIntyre were not permitted to cast any vote on the purported motion. It is DENIED that Serafin was excluded from the vote for the reasons stated in paragraph 50. It is DENIED that plaintiffs Deitrich, Dietrich, and Fink cast any proper votes. Defendants cannot ascertain how Purcell, Campbell, McIntyre, and Serafin would vote so the last sentence is DENIED. It is DENIED that Heath was apparently elected Treasurer. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, an earlier motion approving Behrens as Treasurer was erroneously thought to have failed by an 11-10 vote when three votes were included in the tally for persons who have no Director status within the By-Laws, i.e., Deitrich, Dietrich, and Fink, and whose votes were thereafter deducted from the tally. This meant that the motion to name Behrens as Treasurer had carried 10-8 and that the motion on Heath was thus premised on a misunderstanding, failing anyway since the three improper votes were also cast on that motion.

56. It is ADMITTED that a motion to elect Chris Ortiz as Secretary was made. It is ADMITTED that Waters, Chappell, (John) Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers, and Hill voted in favor of Ortiz for the position of Secretary on the motion. It is ADMITTED

that Russell, Patton, (Jerry) Long, Via, Gaughan, Mattis, Cook and Heist voted against Ortiz on the motion. It is ADMITTED that plaintiffs Purcell, Campbell, and McIntyre were not permitted to vote. It is DENIED that Serafin was excluded from the vote for the reasons set forth in paragraph 50. It is DENIED the Board rejected a motion to elect Ortiz as Secretary if the meaning of the sentence is that the motion failed. To the extent that the motion was in any event not “rejected” the first sentence is DENIED. It is DENIED that Deitrich, Fink, and Dietrich cast proper votes. Defendants cannot ascertain how Purcell, Campbell, McIntyre, and Serafin would vote so the last sentence is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, the motion approving Ortiz as Secretary was erroneously thought to have failed by an 11-10 vote when three votes were included in the tally for persons who have no Director status within the By-Laws, i.e., Deitrich, Dietrich, and Fink, and whose votes were thereafter deducted from the tally. This meant that the motion to name Ortiz as Secretary had carried 10-8.

57. It is ADMITTED that a motion to elect James Behrens as Treasurer was made. It is ADMITTED that Waters, Chappell, (John) Long, Jenkins, Welsh, Rice, Greer, Russ, Chalmers, and Hill voted in favor of Behrens for the position of Treasurer on the motion. It is ADMITTED that Russell, Patton, (Jerry) Long, Via, Gaughan, Mattis, Cook and Heist voted against Behrens on the motion. It is ADMITTED that plaintiffs Purcell, Campbell, and McIntyre were not permitted to vote. It is DENIED that Serafin was excluded from the vote. It is DENIED the Board rejected a motion to elect Behrens as Treasurer if the meaning of the sentence is that the motion failed. To the extent that the motion was in any event not “rejected” the first sentence is DENIED. It is DENIED that Deitrich, Fink, and Dietrich cast proper votes.

Defendants cannot ascertain how Purcell, Campbell, McIntyre, and Serafin would vote so the last sentence is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, the motion approving Behrens as Treasurer was erroneously thought to have failed by an 11-10 vote when three votes were included in the tally for persons who have no Director status within the By-Laws, i.e., Deitrich, Dietrich, and Fink, and whose votes were thereafter deducted from the tally. This meant that the motion to name Behrens as Treasurer had carried 10-8.

V. MEETING OF DECEMBER 19, 2004

58. ADMITTED.

59. It is DENIED that 25 members of the Board attended. It is DENIED that two had given their proxies to members present. By way of further response, to the extent the paragraph is referring to 2004 Directors, there were only 23 such Directors, as described in paragraph 46 above, the answer to which is incorporated herein. One 2004 Director proxy was given in advance of the meeting, that of Chuck Hill. No other valid proxies were given, though the purported proxy of Harvey Deitrich was tendered but was invalid as outside the By-Laws, since Deitrich was not and is not a Director.

60. ADMITTED in part and DENIED in part. It is ADMITTED that Rice explained that the three individuals who had been erroneously considered “Emeritus Directors,” Deitrich, Dietrich, and Fink, were in fact not Directors and so had not cast proper votes at the November 14, 2004 meeting by operation of law. It is ADMITTED that no vote was taken on that issue. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further

response, no vote could have been taken to permit action unauthorized by the By-Laws without first properly amending the By-Laws.

61. ADMITTED in part and DENIED in part. It is ADMITTED that the net effect of learning and concluding that purported “Emeritus Directors” Deitrich, Dietrich, and Fink were not in fact Directors at all was that the motion to elect Ortiz as Secretary carried. It is ADMITTED that the net effect of learning and concluding that purported “Emeritus Directors” Deitrich, Dietrich, and Fink were not in fact Directors at all was that the motion to elect Gaughan as Secretary did not carry. It is ADMITTED that the vote in favor of the motion naming Ortiz as Secretary was 10-8. It is ADMITTED that a subsequent and improperly made motion on Gaughan had a vote tally of 10 to 8 against the motion. It is DENIED that any “ruling” was made by Rice. By way of further response, Rice merely informed the Board of what the By-Laws plainly stated within Pennsylvania law. The rest of the paragraph, to the extent that it requires response, is DENIED.

62. ADMITTED in part and DENIED in part. It is ADMITTED that the net effect of learning and concluding that purported “Emeritus Directors” Deitrich, Dietrich, and Fink were not in fact Directors at all was that the motion to elect Behrens as Treasurer carried. It is ADMITTED that the net effect of learning and concluding that purported “Emeritus Directors” Deitrich, Dietrich, and Fink were not in fact Directors at all was that the motion to elect Heath as Treasurer did not carry. It is ADMITTED that the vote in favor of the motion naming Behrens as Treasurer was 10-8. It is ADMITTED that a subsequent and improperly made motion on Heath had a vote tally of 10 to 8 against the motion. It is DENIED that any “ruling” was made by Rice. By way of further response, Rice merely informed the Board of what the By-Laws

plainly stated within Pennsylvania law. The rest of the paragraph, to the extent that it requires response, is DENIED.

63. ADMITTED in part and DENIED in part. It is ADMITTED that a motion concerning Francine Serafin and “restoring” her vote for the November 14, 2004 meeting failed. It is DENIED that Waters voted against the motion. It is DENIED that the vote on the motion was 13-13. It is DENIED that plaintiffs Purcell, Campbell, McIntyre, Dietrich, Deitrich, and Fink were not permitted to vote on the motion. The motion’s content speaks for itself, and any attempt to mischaracterize that content is DENIED. By way of further response, Waters voted in favor of the motion in keeping with his consistent effort to reach out to plaintiffs in a conciliatory manner. The vote tally was 13-13 with one abstention. Purcell, Campbell, McIntyre, Deitrich (by proxy), and Dietrich did vote on the motion, voting in favor, though the votes of Campbell, Dietrich, and Deitrich were outside the By-Laws and thus should not have been allowed under any circumstances. Fink was not in attendance and did not seek to vote by proxy or any other means. The last sentence cannot be understood and thus is DENIED. Any implication that there were any circumstances under which the motion would have carried its required 2/3 majority is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, the motions at the November 14, 2004 meeting that named Ortiz and Behrens as Secretary and Treasurer respectively were approved by 10-8 votes and thus would not in any event have been altered even were Serafin’s one vote to have been later added to the tally. The same is true for the Welsh vote (11-7 in favor of Welsh) on the motion naming Welsh the 2005 Vice President/President Elect and the 2006 President.

64. ADMITTED in part and DENIED in part. It is ADMITTED that a motion concerning Milt Purcell and votes on 2005 matters during the November 14, 2004 meeting failed. It is ADMITTED that the President stated that the motion in question required a 2/3 vote to pass pursuant to the By-Laws. It is DENIED that the vote on the motion was 15-10. It is DENIED that plaintiffs Purcell, Campbell, McIntyre, Dietrich, Deitrich, and Fink were not permitted to vote on the motion. The motion's content speaks for itself, and any attempt to mischaracterize that content is DENIED. The last sentence cannot be understood and thus is DENIED. Any implication that there were any circumstances under which the motion would have carried its required 2/3 majority is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, Waters voted in favor of the motion in keeping with his consistent effort to reach out to plaintiffs in a conciliatory manner. The vote tally was 15-11. Purcell, Campbell, McIntyre, Deitrich (by proxy), and Dietrich did vote on the motion, voting in favor, though the votes of Campbell, Dietrich, and Deitrich were outside the By-Laws and thus should not have been allowed under any circumstances. Fink was not in attendance and did not seek to vote by proxy or any other means. The motions at the November 14, 2004 meeting that named Ortiz and Behrens as Secretary and Treasurer respectively were approved by 10-8 votes and thus would not in any event have been altered even if the Homestead Chapter's one vote were to have been later added to the tally. The same is true for the Welsh vote (11-7 in favor of Welsh) on the motion naming Welsh the 2005 Vice President/President Elect and the 2006 President.

65. ADMITTED in part and DENIED in part. It is ADMITTED that a motion concerning the purported Honorary Chapter and votes on 2005 matters for the November 14,

2004 meeting failed. It is ADMITTED that the President stated that the motion in question required a 2/3 vote to pass pursuant to the By-Laws. It is DENIED that the vote on the motion was 15-9. It is DENIED that plaintiffs Purcell, Campbell, McIntyre, Dietrich, Deitrich, and Fink were not permitted to vote on the motion. The motion's content speaks for itself, and any attempt to mischaracterize that content is DENIED. The last sentence cannot be understood and thus is DENIED. Any implication that there were any circumstances under which the motion would have carried its required 2/3 majority is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, Waters voted in favor of the motion in keeping with his consistent effort to reach out to plaintiffs in a conciliatory manner. The vote tally was 15-9 with two abstentions. Purcell, Campbell, McIntyre, Deitrich (by proxy), and Dietrich did vote on the motion, voting in favor, though the votes of Campbell, Dietrich, and Deitrich were outside the By-Laws and thus should not have been allowed under any circumstances. Fink was not in attendance and did not seek to vote by proxy or any other means. The motions at the November 14, 2004 meeting that named Ortiz and Behrens as Secretary and Treasurer respectively were approved by 10-8 votes and thus would not in any event have been altered even if the purported Honorary Chapter's one vote were to have been later added to the tally. The same is true for the Welsh vote (11-7 in favor of Welsh) on the motion naming Welsh the 2005 Vice President/President Elect and the 2006 President.

66. ADMITTED in part and DENIED in part. It is ADMITTED that a motion concerning Homestead Chapter and whether to recognize what was stated to be its election of a Chapter Representative passed unanimously. It is ADMITTED that a motion concerning the purported Honorary Chapter and whether to recognize what was stated to be its election of a

purported Chapter Representative passed unanimously. It is DENIED that the motion concerning the purported Honorary Chapter was unqualified because it specifically stated that the vote did not intend to expand what was authorized by the By-Laws as concerns the purported Honorary Chapter. The content of these motions speaks for itself, and any attempt to mischaracterize that content is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, the Board had instructed the Homestead and Washington D.C. Chapters and the purported Honorary Chapter to conduct proper elections for the 2005 Chapter Representative positions, making clear that once these were conducted, MHSAA By-Laws would be satisfied and the Chapter Representatives selected properly would qualify for the Board as 2005 Directors. The Homestead Chapter and purported Honorary Chapter demonstrated that they had complied on this matter and therefore the persons they chose as Chapter Representative and purported Chapter Representative were recognized by the Board as Directors within the By-Laws, to the extent the By-Laws recognized these Chapters at all, which in the case of the purported Honorary Chapter was questionable. In the case of the purported Honorary Chapter, the motion recognizing such was thus qualified with language which made clear that By-Laws governed any recognition of the Honorary Chapter as a Chapter capable of selecting a Director. Subsequently, it was learned that the By-Laws do not in fact authorize an Honorary Chapter nor a Director who is an Honorary Member nor a Director selected from the purported Honorary Chapter, and the Board could not by vote create an “Honorary Chapter” Director position where the By-Laws did not authorize such. In order to allow the purported Honorary Chapter to attain rights to select a Director, the By-Laws have to be amended, and this has not occurred. In the case of the Homestead Chapter, the Chapter leadership, including plaintiff Purcell, rounded up the necessary votes to elect Purcell as the 2005

Chapter Representative, and then conducted the vote at a Chapter meeting. However, on the night of the initially scheduled Chapter Representative vote, November 8, 2004, when five Chapter leaders, including Purcell, declared that they “had just had a special meeting upstairs,” it is questionable whether Purcell could have secured the necessary votes. Nonetheless, the Board accepted the results of the Chapter Representative election that ultimately secured Purcell his position. In the case of the purported Honorary Chapter, at their November meeting prior to the MHSAA Board’s November 14, meeting, when the purported Chapter Representative election was not permitted by Campbell and those working with her, it was probable that Campbell would not have been elected by those present at that meeting, and thus the election was blocked entirely for that meeting. Later, after Campbell lined up the necessary votes, which was after the November 14, 2004 MHSAA Board meeting, Campbell permitted the vote among the purported Honorary Chapter members in attendance, her victory thereby secured. In the Washington D.C. Chapter, no proper Chapter Representative election has yet been held for 2005, plaintiff McIntyre remaining unwilling to put the matter to a vote among Washington D.C. Chapter members, several of whom have continued to complain about this to no avail. In all cases, the leadership of the Homestead and Washington D.C. Chapters and purported Honorary Chapter intentionally blocked Chapter and purported Chapter elections prior to the MHSAA Board’s November 14, 2004 meeting specifically to assure themselves of the votes necessary to take control of the Board’s 2005 Officer positions and thereby override the wishes of the membership by manipulating elections at all levels, Chapter and general, and with Purcell and others having also orchestrated the rule violations that led to their hand-picked candidates’ sweeping the four at-large Director positions in the 2004 Director elections, in pursuit of financial gain.

67. ADMITTED in part and DENIED in part. It is ADMITTED that a motion concerning Graham McIntyre and votes for the November 14, 2004 meeting failed. It is ADMITTED that the President stated that the motion in question required a 2/3 vote to pass pursuant to the By-Laws. It is DENIED that the vote on the motion was 13-10. It is DENIED that plaintiffs Purcell, Campbell, McIntyre, Dietrich, Deitrich, and Fink were not permitted to vote on the motion. The motion's content speaks for itself, and any attempt to mischaracterize that content is DENIED. The last sentence cannot be understood and thus is DENIED. Any implication that there were any circumstances under which the motion would have carried its required 2/3 majority is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, Waters did not vote against the motion but abstained, in keeping with his consistent effort to reach out to plaintiffs in a conciliatory manner. The vote tally was 13-10 with two abstentions. Purcell, Campbell, McIntyre, Deitrich (by proxy), and Dietrich did vote on the motion, voting in favor, though the votes of Campbell, Dietrich, and Deitrich were outside the By-Laws and thus should not have been allowed under any circumstances. Fink was not in attendance and did not seek to vote by proxy or any other means. The motions at the November 14, 2004 meeting that named Ortiz and Behrens as Secretary and Treasurer respectively were approved by 10-8 votes and thus would not in any event have been altered even if the Washington D.C. Chapter's one vote were to have been later added to the tally. The same is true for the Welsh vote (11-7 in favor of Welsh) on the motion naming Welsh the 2005 Vice President/President Elect and the 2006 President.

VI. MEETING OF DECEMBER 26, 2004

68. ADMITTED in part and DENIED in part. It is ADMITTED that the MHSAA Board of Directors held a special meeting by telephone conference call on December 26, 2004. The second sentence is ambiguous as to meaning and is accordingly DENIED. To the extent that the second sentence implies that there was no quorum to conduct business at the meeting it is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, the By-Laws Article IV, Section 11 specifies that a majority of the Board shall constitute a quorum. A majority of the Board participated in the meeting and so a quorum at this meeting existed. The only matters that could not have been acted on for reasons of quorum were 2005 Officer matters, since plaintiffs organized a boycott of the meeting that defeated a quorum on 2005 matters.

69. ADMITTED.

VII. HARM

70. It is not understood what is meant by “the improper actions described below” and the sentence is accordingly DENIED. To the extent that this implies that MHSAA’s Board committed any improper actions as described by plaintiffs in their complaint it is DENIED. The rest of the sentence, to the extent that it requires response, is DENIED.

71. It is DENIED that Francine Serafin was not allowed to vote at the November 14, 2004 meeting. It is not known how Serafin would have voted at the November 14, 2004 meeting had she attended and so paragraphs (a) through (f) are all DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED.

72. It is DENIED that Purcell, Campbell, and McIntyre were the Chapter Representatives of any Chapters at the time of the November 2004 meeting so far as any 2005 MHSAA business was concerned because these persons had prevented these Chapters and purported Chapter from holding any proper election, and thus the Chapters and purported Chapter were without a 2005 Chapter Representative and purported Chapter Representative as, a result of the misconduct of Purcell, Campbell, and McIntyre working with others. It is DENIED that any Chapter Representatives were not allowed to vote at the November 14, 2004 meeting. It is not known how Purcell, Campbell, and McIntyre would have voted at the November 14, 2004 meeting had they been permitted to vote and so paragraphs (a) through (f) are all DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED.

73. It is DENIED that Jerry Waters was ineligible to vote. It is DENIED that Waters improperly cast any vote and so paragraphs (a) through (f) are DENIED to the extent that they imply that Waters' votes on these matters were improper. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, the answer to paragraph 51 is incorporated herein by reference.

74. ADMITTED in part and DENIED in part. It is ADMITTED that the votes of plaintiffs Deitrich, Fink, and Dietrich were not counted. It ADMITTED that Deitrich, Fink, and Dietrich cast the improper votes that plaintiffs claim they would have cast as set forth in paragraphs (a) through (f). It is DENIED that plaintiffs Deitrich, Fink, and Dietrich are Emeritus Directors. It is DENIED that Deitrich, Fink, and Dietrich were not allowed to vote. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response,

Deitrich, Dietrich, and Fink were permitted, mistakenly, to vote on these matters at the meeting in question. It was later learned that their votes were invalid as outside the By-Laws.

75. It is not understood what is meant by “the improper actions described below” and the sentence is accordingly DENIED. To the extent that this implies that MHSAA’s Board committed any improper actions as described by plaintiffs in their complaint it is DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED.

76. ADMITTED.

77. ADMITTED.

78. It is not understood what is meant by “the improper actions described below” and the sentence is accordingly DENIED. To the extent that this implies that MHSAA’s Board committed any improper actions as described by plaintiffs in their complaint it is DENIED. It is DENIED that the Executive Committee consists of only Past President Rice. The rest of the paragraph, to the extent that it requires response, is DENIED.

COUNT I

79. Defendants reincorporate their answers to Paragraphs 1 through 78 as if fully set forth herein.

80. ADMITTED in part and DENIED in part. It is ADMITTED that Francine Serafin sent Jill Grimes, the MHSAA office assistant, an e-mail concerning participation in the November 14, 2004 meeting by telephone. That e-mail speaks for itself and any attempts to misconstrue its contents or legal effect are DENIED. By way of further response, attempts to

contact Serafin were made during the meeting but failed because she was not available. By way of further response, the answer to paragraph 50 is incorporated herein by reference.

81. ADMITTED in part and DENIED in part. It is ADMITTED that said statute concerns use of conference telephone. The statute speaks for itself and it is DENIED that plaintiffs' characterizations of the statute are as stated. The rest of the sentence is DENIED as requiring a legal conclusion.

82. ADMITTED.

83. DENIED as requiring a legal conclusion. To the extent that the sentence implies any bad faith whatsoever on the part of defendants it is DENIED.

84. ADMITTED in part and DENIED in part. It is ADMITTED that John Rice presided over the November 14, 2004 meeting. It is ADMITTED that when questioned about whether Francine Serafin had provided notice of her intent to participate in the meeting by conference call Rice denied that she had given him such notice. It is DENIED that Rice knew that Serafin wished to participate in that meeting by telephone conference. To the extent that the paragraph implies that Rice breached any duty he had to himself take affirmative measures during the meeting to call Serafin or otherwise connect her to the meeting, it is DENIED. It is DENIED that Rice made no effort to allow Serafin to participate in that meeting by conference telephone. To the contrary, Serafin had a duty to take some measures to participate by telephone, and to confirm that some arrangements were made, but failed to do so, and then was unavailable when calls were made to her during the meeting to try to contact her. It is DENIED that Rice "falsely denied she had given him any such notice." The meaning of "good faith

effort” here is ambiguous as to meaning and is accordingly DENIED. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, the answer to paragraph 50 is incorporated herein by reference.

85. DENIED.

86. DENIED.

87. DENIED.

COUNT II

88. Defendants reincorporate their answers to Paragraphs 1 through 87 as if fully set forth herein.

89. ADMITTED in part and DENIED in part. It is ADMITTED that the MHSAA Board met on November 14, 2004. It is DENIED that the Board disallowed the votes of any Chapter Representatives.

90. ADMITTED in part and DENIED in part. It is ADMITTED that the By-Laws establish rules for the election of Chapter Representatives by qualifying Chapters. Any attempt to misconstrue those By-Laws is DENIED. To the extent that anything else in this paragraph requires a response it is DENIED. By way of further response, Article X, Section 1 of the By-Laws explicitly reserves to the MHSAA Board the right to “set forth the procedures for organizing” Chapters, while Article X, Section 9 mandates that Chapters “shall function in accordance with any regulations set forth by the Board of Directors.”

91. DENIED. By way of further response, the last sentence of the answer to paragraph 90 is incorporated herein by reference.

92. DENIED. By way of further response, the last sentence of the answer to paragraph 90 is incorporated herein by reference.

93. DENIED.

94. DENIED.

95. DENIED.

COUNT III

96. Defendants reincorporate their answers to Paragraphs 1 through 95 as if fully set forth herein.

97. ADMITTED in part and DENIED in part. It is ADMITTED that Jerry Waters was elected to serve a three-year term on the Board. It is DENIED that his term ended on December 31, 2003. By way of further response, the answer to paragraph 51 is incorporated herein by reference.

98. DENIED. By way of further response, the answer to paragraph 51 is incorporated herein by reference.

99. ADMITTED in part and DENIED in part. It is ADMITTED that Jerry Waters continued to serve on the Board after December 31, 2003 as the Vice-President/President-Elect. It is DENIED that this was unauthorized. To the extent that this paragraph requires any other

response, it is DENIED. By way of further response, the answer to paragraph 51 is incorporated herein by reference.

100. ADMITTED in part and DENIED in part. It is ADMITTED that this is an accurate reproduction of a passage from the MHSAA By-Laws. To the extent that this paragraph attempts to misconstrue these By-Laws or requires any other response, it is DENIED.

101. ADMITTED in part and DENIED in part. It is ADMITTED that this is an accurate reproduction of a passage from the MHSAA By-Laws. To the extent that this paragraph attempts to misconstrue these By-Laws or requires any other response, it is DENIED.

102. DENIED. By way of further response, the response to paragraph 97 is incorporated herein.

103. DENIED. By way of further response, the response to paragraph 97 is incorporated herein.

104. DENIED. By way of further response, the response to paragraph 97 is incorporated herein.

105. DENIED. By way of further response, the response to paragraph 97 is incorporated herein.

106. DENIED. By way of further response, the response to paragraph 97 is incorporated herein.

107. DENIED. By way of further response, the response to paragraph 97 is incorporated herein.

COUNT IV

108. Defendants reincorporate their answers to Paragraphs 1 through 107 as if fully set forth herein.

109. ADMITTED in part and DENIED in part. It is ADMITTED that Rice explained that the three individuals who had been erroneously considered “Emeritus Directors,” Deitrich, Dietrich, and Fink, were in fact not Directors and so had not cast proper votes at the November 14, 2004 meeting by operation of law. The rest of the paragraph, to the extent that it requires response, is DENIED. By way of further response, the By-Laws do not create any Emeritus Director position other than for the Past President who serves on the Board by virtue of his past position. To the extent that the By-Laws can be construed as creating the purported Emeritus Directorships claimed by plaintiffs for Deitrich, Dietrich, and Fink, these would have expired after one year, pursuant to Pennsylvania law, and thus would not have granted Deitrich, Dietrich, and Fink the status they sought in 2004 or 2005 under any circumstances. To the extent that plaintiffs claim that these purported Directorships do exist, and do grant Board membership for life or until their replacements have been named, then Fink would have been replaced by Deitrich in 1989, and Deitrich would have been replaced by Dietrich in 1999.

110. ADMITTED in part and DENIED in part. It is ADMITTED that Deitrich, Dietrich, and Fink were not permitted to vote at the December 19, 2004 meeting. It is DENIED that these three are or were Directors. By way of further response, the answer from paragraph 109 is incorporated herein.

111. ADMITTED in part and DENIED in part. It is ADMITTED that Chris Ortiz was elected Secretary by a vote of 10 to 8. It is DENIED that any ruling was made. To the extent that the sentence requires further response it is DENIED. By way of further response, the answer to paragraph 109 is incorporated herein. The motion on Gaughan was never properly introduced since the motion on Ortiz carried.

112. ADMITTED in part and DENIED in part. It is ADMITTED that Jim Behrens was elected Treasure by a vote of 10 to 8. It is DENIED that any ruling was made. To the extent that the sentence requires further response it is DENIED. By way of further response, the answer to paragraph 109 is incorporated herein. The motion on Heath was never properly introduced since the motion on Behrens carried.

113. ADMITTED in part and DENIED in part. It is ADMITTED that this is an accurate reproduction of 15 Pa.C.S.A. §5724. To the extent that this paragraph attempts to misconstrue these By-Laws or requires any other response, it is DENIED.

114. It is DENIED that Deitrich, Fink, and Dietrich are or have ever been Emeritus Directors within MHSAA's By-Laws during any time relevant to this lawsuit. To the extent they ever were Emeritus Directors, it is DENIED that they were Emeritus Directors in 2004 or that they are currently Emeritus Directors, or that they held a status in 2004 or 2005 that calls for a successor. By way of further response, the answer from paragraph 109 is incorporated herein.

115. It is DENIED any Emeritus Director category applicable to Deitrich, Dietrich, and Fink exists within MHSAA's By-Laws. To the extent that it does exist, it is Denied that it extends such Emeritus Director terms until "their successor has been selected or qualified." To

the extent that any other response is required by this paragraph it is DENIED. By way of further response, the answer from paragraph 109 is incorporated herein.

116. DENIED.

117. DENIED.

118. DENIED.

COUNT V

119. Defendants reincorporate their answers to Paragraphs 1 through 118 as if fully set forth herein.

120. ADMITTED.

121. To the extent that this sentence misconstrues the resolution at issue or the law related thereto it is DENIED. To the extent that this sentence requires any other response it is DENIED. To the extent that the sentence requires a legal conclusion it is DENIED. By way of further response, the sentence misconstrues the resolution at issue which, by its terms, only allows the Board to conduct new elections on the Director positions at issue “if and as permitted by applicable law,” underscoring an intention to be sure that any related action be proper and within the By-Laws and applicable law.

122. ADMITTED in part and DENIED in part. It is ADMITTED that John Long’s vote was not cast on one matter because he had to drop off the conference call to travel to church, and had forgotten to designate a proxy. It is DENIED that this in any way “improperly excluded certain Board members from voting at the December 26th meeting,” or that (John)

Long or anyone else ever claimed it to be improper. On the contrary, all participants in the December 26, 2004 meeting participated on every issue, other than (John) Long as described here, but the mere question of excluding anyone on any vote never arose. By way of further response, the meeting was convened by teleconference call on the Sunday after Christmas, with all participants eager to complete business and get back to family and personal matters. Plaintiff Heist, who was out of the country on vacation, had arranged to have Mr. Joe Geiger, the President of the Pennsylvania Association of Non-Profit Organizations (“PANO”) call into the conference call number and ask to “monitor” the call. Geiger explicitly stated that he had suggested to Heist well in advance of the meeting that Heist provide some advance notice to the Board’s Officers so as to obtain some advance approval and allow for a reasonable degree of notice. Heist refused Geiger’s suggestion, choosing instead to surprise the Board and confront the meeting participants with the entire question of whether to allow Geiger to “monitor” the call as requested at the outset. While Fouad and others spoke in favor of allowing Geiger to monitor the call as inconsequential, the majority of participants, accustomed to other of Heist’s disruptive and annoying actions, and without any understanding of just who Geiger was and what PANO did, politely declined to allow Geiger to stay on the conference call, in light of the manner in which Heist chose to intentionally surprise the Board. Later, after Waters had an opportunity to learn about PANO, Waters called Geiger and requested PANO assistance in helping MHSAA address the challenges it has faced as concerns By-Laws interpretations, conflicts of interest, and so forth. No Board member was excluded from the December 26, 2004 meeting, and other than Geiger as described here, there was no question of anyone’s participation in any manner raised that day. Had Heist merely approached the Board with some advance notice about Geiger’s proposed participation, Geiger would have been welcomed to monitor the call. Ultimately, the

matter merely consumed about 30 minutes of the meeting participants' time needlessly, on the day after Christmas, but with Heist away on vacation.

COUNT VI

123. Defendants reincorporate their answers to Paragraphs 1 through 122 as if fully set forth herein.

124. ADMITTED.

125. ADMITTED.

126. It is not understood what is meant by "the improper actions described above" and the sentence is accordingly DENIED. To the extent that this implies that MHSAA's Board committed any improper actions as described by plaintiffs in their complaint it is DENIED. It is DENIED that the Executive Committee consists of only Past President Rice. The rest of the paragraph, to the extent that it requires response, is DENIED.

127. To the extent that this paragraph implies that the Executive Committee is now comprised of one person it is DENIED. To the extent that the paragraph requires any other response it is DENIED.

NEW MATTER

I. PLAINTIFFS INCLUDE AND ARE ORGANIZED BY PERSONS ACTING WITH UNCLEAN HANDS IN PURSUIT OF SELF-INTEREST TO THE GRAVE DETRIMENT OF MHSAA

128. The backdrop of the instant litigation includes the evolution of MHSAA as a service provider and corporate entity seeking better enforcement of the Hersheys' child-saving charitable intent. Most recently, this MHSAA role has translated into efforts to compel the Milton Hershey School Administration, the Hershey Trust Company Board of Directors, and the Milton Hershey School Board of Managers (collectively, "MHS") to implement certain governance reforms that had been promised by MHS, and that MHS seeks to avoid, as further described below. Certain persons, including some plaintiffs, have direct financial interests at stake that have led them to act adversely to MHSAA's interests and to instead assist MHS in its goal of resisting structural reforms.

129. MHSAA was established at the direction of Milton S. Hershey in 1930 and incorporated itself in 1947.

130. Over the decades, MHSAA has evolved to embrace larger responsibilities related to the child-saving mission of Milton & Catherine Hershey, the founders of MHS.

131. As MHSAA took on more responsibilities, creating service programs for MHS children and young graduates in the mid-1990's and becoming a force in matters concerning MHS and Derry Township itself starting in the early 1990's, the MHSAA By-Laws have become more relevant too, as control of MHSAA started to have larger implications.

132. Whereas in the past the By-Laws were not necessarily always consulted, and the status of certain purported Directors was not carefully scrutinized, efforts to take control of MHSAA by parties pursuing self-interest and with goals adverse to those of most alumni have led all concerned to consult the By-Laws more closely, as the last arbiter of the struggle to

control MHSAA. This is particularly as control of MHSAA has come to affect MHS activities and decisions, with MHS coming to use its vast resources to try to impose its wishes on MHSAA, or failing that, to try to marginalize the Association.

133. Where MHSAA has either silently acquiesced in MHS decisions or openly supported them, MHSAA independence has for the most part been irrelevant to MHS. Where MHSAA has shown a willingness to challenge MHS decisions, MHSAA independence has come to concern and at times trouble MHS.

134. MHSAA first exerted major influence on MHS matters when the Association successfully fought to preserve some form of MHS vocational education in the early 1990's, after MHS announced plans to end such programs in their entirety. MHSAA opposition to this MHS decision represented a dramatic break with MHSAA's past as a passive supporter of virtually every MHS decision, whether or not such decisions were viewed by alumni as within the Hersheys' Deed of Trust.

135. The trend begun with the effort to preserve vocational education has become more pronounced, requiring MHSAA to become more sophisticated in terms of the Hersheys' residential childcare mission and issues of Pennsylvania charitable trust law.

136. MHSAA's growth and evolution has included recruiting Board members who better reflect the current make-up of the MHS student body, who bring increasing educational, childcare, business, and legal sophistication to the Board, and who are younger and increasingly diverse. Examples of MHSAA Directors who have contributed to improving MHSAA's service-provider functions, and whose removal is sought by the instant lawsuit, include:

(a) President Jerry Waters, a Pennsylvania state-wide recognized wrestling coach with decades of experience in coaching youth at all levels and in the Harrisburg area in particular, and who is also the Association's first African American President;

(b) Vice-President/President-Elect Chuck Welsh, a respected educator, middle school principal, and decorated combat veteran, with decades of experience as a teacher, mentor, and coach;

(c) Treasurer Jim Behrens, a long-serving Director who has been part of MHSAA's emphasis on developing services, with over three decades of work with the Boy Scouts of America, the same time as a Sunday school teacher, and who has quietly labored for years in the position of MHSAA Treasurer thereby earning the respect of virtually every Director who has served during that time; and,

(e) Secretary Chris Ortiz, a 1999 graduate of MHS, a 2003 graduate of the Wharton School of Business, and the youngest Director ever elected to the MHSAA Board.

137. MHSAA has branched out in terms of services in addition to seeking better enforcement of the Hersheys' Deed of Trust. For example, Director Chris Ortiz has spent the last three years organizing MHSAA's Young Graduates Committee and related website, working to integrate young alumni into the Association in a manner that never happened before, and giving current students a younger, more recent graduate to serve their interests and with whom students can more closely identify.

138. This progress by MHSAA has not been well-received by all parties, particularly those who would have MHSAA serve as a mere social club unresponsive to changed times.

139. The increase in sophistication by the Association, when coupled with MHSAA's independence, has also not been entirely well-received by those within MHS who disagree with MHSAA positions on major MHS issues, particularly when MHSAA has challenged major MHS decisions. This dynamic creates the problem of self-interest conflicting with duties to MHSAA, as MHS-provided material rewards are used to induce actions, such as those of plaintiffs, that disrupt MHSAA's work and that undermine MHSAA's obligations to its members. Examples of MHSAA challenges to major MHS decisions include:

(a) In 1999, MHSAA succeeded in convincing the Orphans' Court to deny the joint MHS/Office of Attorney General ("OAG") request to divert over 1,000 acres of MHS land to non-child use, during the CHILD cy pres proceeding.

(b) In 1999, MHSAA raised the issue of changing MHS enrollment standards in a manner that was eroding the Hersheys' orphan and poverty admissions criteria, successfully drawing the attention of the OAG and others to this.

(c) In early 2000, MHSAA raised the issue of the unhealthy crowding of children by MHS and the dangers of multi-age housing, successfully drawing the attention of the OAG and others to this.

(d) In 2000, MHSAA succeeded in convincing the OAG to investigate alleged MHS departures from the Hersheys' Deed of Trust and related alleged governance flaws, and thereafter assisted the OAG in material aspects of this investigation.

(e) In 2001, the OAG concluded the investigation requested by MHSAA, agreeing with MHSAA's allegations about departures from the Deed of Trust, and ordering the broad

structural reforms that MHSAA had sought. The OAG thereupon commenced negotiations of the structural reforms sought by MHSAA, with the Association participating in certain aspects of those negotiations.

(f) On July 31, 2002, the OAG and MHS entered into a structural reform agreement of historic proportions (the “Reform Agreement”) as had been sought by MHSAA, a monumental achievement for MHSAA even if MHSAA believed that the reforms should have gone further in protecting the rights of the neediest and most alone children.

(g) In September 2002, MHSAA sought to intervene in the OAG’s proceeding seeking to enjoin the sale of Hershey Foods, when the OAG, in the view of the Association, misstated its *parens patriae* duty obligations in the context of that proceeding. The proceeding was eventually rendered moot when the sale effort was abandoned.

(h) During the Hershey Foods legal proceedings, MHSAA articulated grounds for intervention that remain relevant today, and the Association’s position on the proposed sale influenced the larger course of events as concerned that proposed sale.

(i) Most recently, MHSAA succeeded in obtaining a landmark Commonwealth Court ruling granting the Association standing to present evidence and arguments on a key item of MHSAA business, i.e., the Reform Agreement.

140. While some, including the vast majority of alumni, have lauded MHSAA’s increased sophistication and willingness to provide an independent alumni voice on certain key matters, others, including MHS and persons whose interests are tied to MHS, have viewed

MHSAA as thorn in their side, and have sought to do all in their power to marginalize the Association.

141. MHSAA's willingness to scrutinize MHS decisions, apprise alumni of key information, press the OAG for more enforcement action, and, where necessary, challenge the decisions of MHS, the OAG, or both, in public or in court, has not endeared MHSAA to all parties, even if alumni generally desire an MHSAA that will fulfill these roles.

142. Efforts to try to negate MHSAA's influence commenced in earnest in 2001 under the then Hershey Trust Company Board of Directors (the "Trustees"). Acting at the Trustees' direction, former MHS President Dr. William Lepley sought to take over full administration of three jointly-administered MHSAA-MHS programs, Mentoring, Transitioning, and Job Shadowing, after MHSAA had helped to launch these programs.

143. MHSAA's actions as concerns the proposed sale of Hershey Foods further established the ability of the Association to influence MHS matters, earning the Association resentment by those at MHS who may at some point have been on the pro-sale side of the issue, including current Trustees.

144. MHSAA's actions as concerns publicly exposing certain MHS problems, such as multi-age housing, public misrepresentations on issues of enrollment, waste of assets on questionable construction projects, and conflicts of interest, have earned the Association resentment by those at MHS whose conduct was at issue in regard to some of these matters, including certain current Trustees.

145. Increased relevance on the part of MHSAA and efforts by MHS to see MHSAA independence curtailed have led to frictions between MHS and MHSAA over time, with MHS using its position and resources to interfere with MHSAA programs, pressure its leaders, and otherwise seek a return by the Association to its role as a rubber-stamp for MHS policies, whether or not alumni agree with these policies.

146. The attempt to marginalize MHSAA that was begun under former MHS President Dr. William Lepley has been accelerated under the current Trustees and MHS President.

147. The actions described above have created a climate of great unrest among alumni, and placed the MHSAA leadership in the difficult position of having to choose between restraint in the face of unfair criticism, or contributing to a climate of acrimony by responding in kind. MHSAA has for the most part chosen to respond with restraint.

148. Control of MHSAA's Board is an essential element of ending MHSAA's ability to monitor MHS decision-making or otherwise influence MHS and Derry Township matters.

149. If MHSAA's independence can be compromised, MHSAA's future ability to influence MHS can also be impeded, and future actions by MHS can proceed without what some deem the interference of alumni acting through MHSAA.

150. Most important of all, if MHSAA's independence can be compromised, MHSAA's ability to continue its legal battle to enforce the Reform Agreement can also be compromised, even if MHSAA's legal arguments are the ones that should prevail.

151. The effort to control MHSAA's Board and to install Directors who will do the bidding of MHS has led to the increased consulting of MHSAA By-Laws that in the past might have been inadequately consulted. Certain parties have tested the limits of these By-Laws, seeking to take advantage of By-Laws ambiguities to impose their wishes, and the wishes of MHS, on alumni generally.

152. This larger set of events forms the back-drop for the instant litigation, where actions inconsistent with MHSAA By-Law provisions previously unchallenged are now squarely at issue, as a faction of alumni -- supported by MHS and in some cases with material personal interests related to MHS at stake -- seeks to impose its wishes and those of MHS on the MHSAA Board.

153. Plaintiffs are a group of individuals who have sought to take advantage of actions taken in disregard of MHSAA By-Laws provisions that they believe favor their goals, while ignoring the provisions that defeat their goals, and all to advance the personal agendas of certain plaintiffs. This is in contravention of the wishes of the vast majority of alumni, though consistent with the goal of MHS to finally end what it views as interference by an MHSAA acting for independent alumni.

154. The instant lawsuit represents an attempt to place MHSAA in the hands of individuals who have personal or financial motives at stake that are in conflict with their duties to MHSAA, and whose goals are antithetical to the goals of the vast majority of alumni, and whose action will impede the ability of MHSAA to remain a credible and independent defender of the Hersheys' child-saving mission.

155. The Officers and Directors targeted for removal in the instant lawsuit are all individuals who have been supportive of MHSAA efforts to enforce the Reform Agreement and retain MHSAA independence, including President Jerry Waters, President-Elect Chuck Welsh, Secretary Chris Ortiz, and Treasurer Jim Behrens.

155. Plaintiffs, and those working with plaintiffs, have been among those who have opposed MHSAA's reform efforts and MHSAA independence, acting at the behest of MHS, including in obstructing normal MHSAA business.

156. The additions to the Board sought by plaintiffs in the instant lawsuit will tip the balance of the Board against those who favor MHSAA independence and pursuit of restoring the Reform Agreement.

157. Efforts to mislead alumni on internal MHSAA Board matters have been pursued by plaintiffs and others, including in close cooperation with MHS, to advance the MHS goal of ending MHSAA independence and MHSAA Reform Agreement enforcement efforts. The vast resources of MHS have been particularly effective in this, for example by funding a series of highly-misleading mass-mailings to all 5,500 alumni, to which MHSAA cannot afford to respond.

II. PLAINTIFFS ARE BURDENED BY CONFLICTS OF INTEREST

158. The persons acting on behalf of MHS in the attempt to undermine MHSAA's independence and reform efforts, including certain plaintiffs, have material interests at stake that will be advanced by their aiding MHS and harming MHSAA.

159. For example, plaintiff Milton Purcell, a primary organizer of the instant lawsuit, has during the last two years sought to sell a piece of real estate to MHS on highly favorable terms, and to thereby turn a vast profit on a property that he had earlier purchased from MHS, by selling it back to MHS at a much higher price than what he paid for it.

160. Purcell succeeded in consummating the transaction described above towards the end of last year, but only after a series of actions by him, his employees, and those acting at his direction that were intended to advance the MHS goal of ending MHSAA independence and Reform Agreement litigation.

161. The terms of sale for the property at issue include ongoing MHS financial support for a venture housed in the property and which Purcell helped to start and hopes to advance, known as the Dearden House.

162. Purcell's financial reliance on MHS confronts him with conflicts of interest, that have been exacerbated by financial pressures faced by him and that forced him to downsize his business.

163. Despite this conflict between Purcell's personal financial and other interests associated with MHS and the interests of MHSAA, he has for two years engaged in constant and aggressive efforts to antagonize pro-reform MHSAA leaders and to work to force MHSAA to end its independence and pro-reform activities, at times resorting to physical and financial threats.

164. Examples of Purcell's conduct include signing a petition calling for a meeting to force the removal of two pro-reform and pro-independence former MHSAA Directors, Ric

Fouad and Joe Berning, in May 2003 (the “2003 Removal Campaign”). The 2003 Removal Campaign was among the most unseemly, divisive, and painful moments in recent MHSAA history, organized by a handful of individuals with direct ties to MHS, and including Trustee participation. The campaign failed, but not before the organizers damaged MHSAA credibility and ended several friendships. Five days after the meeting to remove Fouad and Berning failed to achieve that goal, MHS rescission of the Reform Agreement was announced, it being apparent that the removal of Fouad and Berning had been sought in advance of the rescission coming to light.

165. Other examples of Purcell’s actions intended to interfere with MHSAA’s work while advancing his own personal interests include:

(a) Signing a highly-publicized letter in the fall of 2003 opposing the MHSAA Reform Agreement litigation and thereby misleading the public on an issue where MHSAA’s actions have enjoyed broad alumni support;

(b) Seeking the removal from the MHSAA Board of Officers who are known to support MHS reforms and an independent MHSAA;

(c) Misleading alumni at large into voting for certain MHSAA Director candidates during the election of 2004, which candidates Purcell knew would be compliant with the wishes of MHS and contravene the pro-reform and pro-independence wishes of the vast majority of alumni; and,

(d) Flatly changing his position on the Reform Agreement litigation late last year, in an effort to mislead alumni as to his positions and motives on the Reform Agreement, once it

became clear that MHSAA's Reform Agreement litigation had better chances for success than had earlier appeared to be the case.

166. Purcell has not acted alone, but has also used his employees and others to aid in his anti-reform and anti-independence activities on behalf of MHS, with certain of these people also benefiting thereby.

167. One of Purcell's former employees, Ralph Carfagno, while employed by Purcell, was a key organizer of the 2003 Removal Campaign, inciting others and arguing that more aggressive language be used in attacking Fouad and Berning, and thereby causing the matter to be particularly acrimonious. Carfagno did not make known at the time that his personal interests were at stake, in that he was then seeking an MHS position, and that his conduct in organizing the 2003 Removal Campaign was intended to improve his chance of obtaining that position.

168. Carfagno was immediately thereafter hired by MHS as the "Director of Graduate Services," in a manner that may have been a reward for his and Purcell's actions, after Carfagno was downsized from a Purcell business as a machine salesman. Carfagno has since worked closely with Purcell in an effort to impede MHSAA's work, using MHS resources to do so, and both together advancing Purcell's personal interests in this.

169. Carfagno does not have any of the qualification that one would have expected in someone obtaining the position of Director of Graduate Services, lacking any degree beyond a high school diploma or any relevant professional experience. An eminently qualified person, Dr. Warren Hitz, was removed from the position immediately before Carfagno was hired to open the position to Carfagno. Hitz has since left MHS to work elsewhere. These circumstances have

created an unhealthy dynamic where MHS positions, or in Purcell's case real estate contracts, have come to be viewed as a kind of bounty for those who aid in the MHS effort to undermine MHSAA's work. Other examples exist, including the hiring or promotion of relatives of those who assist in the MHS efforts to undermine MHSAA, while MHS vendors have also been forced to aid MHS in this.

170. Carfagno has also played a key role within the Homestead Chapter, the actions of which Chapter, as described below, are central to the MHS effort to impose its wishes on MHSAA. The latter may be one of the reasons that Carfagno was placed in an MHS position for which he was otherwise unsuitable.

171. Plaintiff Purcell's actions have at times violated MHSAA rules and the rules of decorum, including:

(a) Using an alumni mailing database during the 2004 MHSAA Director election to successfully influence that election, in violation of MHSAA rules on the use of such database;

(b) Sending out mass-mailings to alumni that included misrepresentations and non-disclosures of material facts, in a manner that misled alumni, including with regard to the 2004 MHSAA Director election;

(c) Giving unfair assistance to certain candidates during the 2004 MHSAA Director elections.

(d) Blocking the Homestead Chapter from conducting a proper Chapter Representative election at the meeting of November 8, 2004, so that those in attendance at that

meeting were not permitted to choose a Chapter Representative who might have opposed Purcell's anti-reform and anti-independence actions, and who might instead have supported MHSAA's pro-reform and pro-independence leadership;

(e) Sending out a misleading mass-mailing in January 2005, misrepresenting himself to alumni in seeking signatures for a petition calling for an MHSAA general meeting to oust the current MHSAA leadership.

(f) Making a physical threat to a Director at the November 14, 2004 Board meeting, inviting that Director to "step outside;"

(g) Making a similar threat to another Director at the January 30, 2005 Board meeting; and,

(h) Prior to filing this lawsuit, trying to intimidate individual defendant John Rice by warning Rice to "think about your home and family."

172. Other plaintiffs also have material interests that make assisting the MHS anti-reform and anti-independence effort personally rewarding even where this is in conflict with MHSAA interests and the wishes of the vast majority of alumni. These include:

(a) Plaintiff Christine Cook, as an employee of MHS, has a conflict of interest in performing her MHSAA Director duties where MHS seeks goals contrary to those of MHSAA, including on pro-reform and pro-independence issues.

(b) Plaintiff Harry Heath, who is not a Director but who seeks by this lawsuit to become one, is an MHS employee, and as such will be burdened with conflicts of interest should

he obtain the position he seeks where MHS seeks goals contrary to those of MHSAA, including on pro-reform and pro-independence issues.

(c) Plaintiff Ethel Campbell, who is not a Director but who seeks by this lawsuit to become one, has a son involved in commercial real estate dealings with MHS, and whose business could suffer losses if he fell out of favor with MHS. This is particularly problematic because MHS vendors have been directly pressured by MHS to assist in punishing MHSAA, as described below, and thus underscoring the vulnerability of MHS contractors to MHS pressure.

173. The MHSAA Homestead Chapter, in its entirety, has become burdened with conflicts of interest due to the funneling of MHS material benefits to the Homestead Chapter, all in pursuit of MHS goals to undermine the MHSAA pro-reform and pro-independence leadership, and with the Homestead Chapter accepting this even where in direct conflict with the good of the Association and its larger goals.

174. With its Derry Township location and large membership, the Homestead Chapter is highly influential in alumni affairs, and its control by MHS can and has translated into dramatic progress on controlling MHSAA too. Plaintiff Purcell has played a key role in helping MHS use the Homestead Chapter in its effort to control MHSAA and install Directors who will accede to the wishes of MHS in contravention of the wishes of the vast majority of alumni.

175. Current MHS employee Carfagno has also been a central figure in the Homestead Chapter's actions, including in coordination with Purcell. At times, this coordination has been blatant, as when plaintiffs sought to derail a key MHSAA Board meeting, on December 19, 2004, and Carfagno contacted MHSAA on very short notice and unilaterally announced that

MHSAA was not permitted to use its MHS meeting facilities for that Board meeting, nearly preventing the meeting from taking place at all, and forcing MHSAA to scramble to rent a meeting room at a local hotel. This was the first time in MHSAA history that a Board meeting was so blocked by MHS.

176. Examples of MHS actions to set the Homestead Chapter into conflict with MHSAA's pro-reform and pro-independence leadership include:

(a) MHS vendors who were sponsoring MHSAA's largest annual fundraiser in June 2004 were pressured by MHS into withdrawing their sponsorship and diverting their donations instead to the Homestead Chapter. The total amount so diverted was more than \$30,000, harming MHSAA's ability to provide services to MHS children and alumni, while providing subsidies to Homestead Chapter activities. The Homestead Chapter, aware of this diversion, did nothing to discourage it and failed to share such sponsorship contributions with MHSAA.

(b) The MHS purchase of the Purcell property described above includes a provision to make the property available for use by the Homestead Chapter absolutely free of charge.

(c) Besides the hiring of Homestead Chapter member Carfagno by MHS as described above, other Homestead Chapter members have also had immediate family hired by MHS during the last two years, and these persons are among the most aggressive in conduct against pro-reform and pro-independence MHSAA leaders.

(d) MHS has otherwise given "favored status" to the Homestead Chapter, with MHS Administrators and Trustees attending Homestead Chapter meetings, even while they boycott the meetings of the MHSAA Board, and thereby further chipping away at the credibility of MHSAA

leaders. MHSAA leaders are elected by all alumni and not by just one Chapter. But these leaders, many of whom live outside Derry Township, are viewed as undesirable by MHS and so are targeted for removal, to be replaced with those deemed “acceptable,” who often have material interests at stake that MHS can use to obtain its wishes.

177. Homestead Chapter members, due to their Derry Township location and ability to attend in person virtually any MHSAA Board meeting or event, have become an aggressive type of “shock troops,” acting on behalf of MHS to disrupt or chill speech at MHSAA meetings, threaten Directors personally, and threaten those who speak out in support of pro-reform MHSAA leaders.

178. Homestead Chapter members have made phone calls harassing alumni who show support for the current MHSAA leaders, and have tried to intimidate even Homestead Chapter members who speak out at Chapter meetings in opposition to the policies of people like Purcell, or who speak in support of MHSAA’s pro-reform and pro-independence leaders.

179. During the 2004 MHSAA Director elections, the Homestead Chapter President, together with plaintiff Purcell, used an alumni mailing database in violation of MHSAA rules to mass mail to all 5,500 alumni an endorsement of the four Homestead Chapter members, who ultimately won the election with this unfair advantage, i.e., plaintiffs Gerald Gaughan, Robert Patton, Gerald Long, and Junior Via. This was not in isolate, but appears to have been coordinated with a series of MHS mass mailings, all intended to pursue the same goal.

180. During the December 19, 2004 Board meeting, Derry Township police had to be summoned to remove approximately 15 to 20 Homestead Chapter members, who are not

Directors, but who showed up at the meeting in an effort to engage in intimidation of the Directors other than plaintiffs. Plaintiffs actively encouraged this disruption by these Homestead Chapter members, seeking to create a climate of fear wherein those who oppose them are made insecure about even speaking. The indecorous conduct of these Homestead Chapter members at this and other meetings is virtually unknown amongst alumni, and thus particularly difficult for MHSAA's leadership to address. The intimidation it has bred has grown more pronounced and forward with time, fanned by a series of hostile letters and statements from MHS, in a cycle of escalation.

181. Of the 14 plaintiffs in this action, all but three are members of the Homestead Chapter, namely, Milton Purcell, Ethel Cambell, Harvey Deitrich, Ralph Fink, Girard Gaughan, Harry Heath, Robert Patton, Gerald Long, Junior Via, Richard Mattis, and Christine Cook, and thus benefit from the material rewards directed to the Homestead Chapter by MHS in the MHS effort to undermine MHSAA's pro-reform and pro-independence leadership, with Gaughan and Heath seeking MHSAA Officer positions.

182. Conflicts between MHS and MHSAA include the following:

- (a) The ongoing Reform Agreement litigation in favor of MHSAA that MHS is appealing to the Pennsylvania Supreme Court;
- (b) The terminations of relations by MHS with MHSAA in May 2004;
- (c) The takeover of student and alumni programs by MHS, including the hiring away of the MHSAA Executive Director in a potentially tortious manner;

(d) The interference by MHS with sponsorship agreements and entry fees for the MHSAA fundraising golf event in a potentially tortious manner;

(e) The desire of MHS to reduce the independence of MHSAA and to take over all communications with alumni;

(f) The above-described sudden refusal by MHS to allow MHSAA to utilize its Homestead office to conduct the December 19, 2004 Board of Directors meeting on short notice in a potentially tortious manner;

(g) The February 14, 2005 notice of eviction given to MHSAA by MHS to vacate MHS Trust property delivered once MHS learned that its desired slate of MHSAA Officers had not been chosen and which has raised a new dispute with MHS with additional potential MHS legal liability attaching; and,

(h) Past and future possible actions where MHS revokes invitations to MHSAA Directors to attend MHS functions, or refuses to invite MHSAA input into Homecoming or other gatherings sponsored by MHS, a change in past practice.

IV. PLAINTIFFS HAVE COLLECTIVEY WORKED TO UNDERMINE MHSAA'S EFFORTS TO RETAIN INDEPENDENCE AND ENFORCE THE REFORM AGREEMENT AND HAVE SOUGHT TO REMOVE AND UNDERMINE PRO-REFORM AND PRO-INDEPENDENCE LEADERS IN VIOLATION OF MHSAA RULES AND RESOLUTIONS

183. MHSAA has a standing resolution prohibiting Directors from public statements contravening official MHSAA positions as duly promulgated by a majority of the MHSAA Board.

184. MHSAA has a strict policy of not permitting the use of the alumni mailing database for any purposes not authorized by the MHSAA Board.

185. MHSAA has a strict policy of not permitting the use of the alumni mailing database for promoting the campaign of any candidate in MHSAA Director elections.

186. MHSAA Chapters and Chapter Officers are required to comply with MHSAA By-Laws, rules, and resolutions.

187. Plaintiffs have for two years engaged in repeated and consistent acts of disruption of MHSAA affairs including efforts to remove pro-reform and pro-independence MHSAA leaders and to block MHSAA's reform lawsuit.

188. Plaintiff Milton Purcell's actions are described above.

189. Plaintiff Ethel Campbell has signed petitions calling on MHSAA to withdraw the Reform Agreement enforcement litigation, and has repeatedly misrepresented the facts concerning MHSAA's Board to Honorary members of MHSAA.

190. Plaintiff Campbell has also participated in the effort to prevent the Honorary members of MHSAA from choosing a spokesperson, or purported Chapter Representative, who might reflect pro-reform and pro-independence sentiment among the Honorary members instead of acting in accordance with MHS wishes.

191. Plaintiff Graham McIntyre for over two years has engaged in a consistent pattern of conduct aimed at undermining MHSAA's reform and independence efforts, including disruption of its regular business. This includes:

(a) Organizing a failed effort to remove a pro-reform and pro-independence former MHSAA President, Ric Fouad, from the MHSAA Board at the December 2002 Board meeting;

(b) Playing a key role in the 2003 Removal Campaign;

(c) Undermining MHSAA leaders in May 2003 when they sought to negotiate a compromise resolution with MHS on retaining at least some of the provisions of the Reform Agreement, including providing material to the MHS Board of Managers that defamed MHSAA leaders at a crucial point in efforts to obtain compromise;

(d) Helping to organize a petition in the fall of 2003 that publicly opposed MHSAA's Reform Agreement litigation and thereby publicly undermining MHSAA's credibility, including in the eyes of Pennsylvania courts;

(e) Sending letters to all 5,500 alumni falsely attacking MHSAA leaders and disparaging and mischaracterizing MHSAA's Reform Agreement litigation;

(f) Misrepresenting the facts and the law to members of the Washington D.C. Chapter as concerns MHSAA's leadership, Reform Agreement litigation, and internal Board protocol;

(g) Refusing to allow the members of the D.C. Chapter to have any candidate other than himself in the fall 2004 Washington D.C. Chapter Representative election, so that Chapter

members could either vote for McIntyre, or abstain from voting at all, and with no opportunity to vote for any candidate who might have supported MHSAA's pro-reform and pro-independence positions; and,

(h) Engaging in a consistent pattern of obstructionist conduct during MHSAA Board meetings throughout the course of his tenure as the D.C. Chapter representative, including opposing even mundane and routine business and raising frivolous procedural objections intended to drag out Board meetings.

192. Plaintiff Ivan Dietrich has, since January 2003:

(a) Participated in the 2003 Removal Campaign;

(b) Failed to apprise himself, or forgetting, such vital matters as the existence of the Reform Agreement, so that when he was reminded of it in April 2003 by defendant Jerry Waters and others, Dietrich expressed total and complete surprise, not fully registering the agreement's existence until after the 2003 Removal Campaign damage had been done;

(c) After: (i) being reminded of the existence of the Reform Agreement in the spring of 2003; (ii) voting (albeit improperly given his then non-Director status) in June 2003 in favor of the motion to sue to enforce the Reform Agreement; and (iii) urging the Board at the time of the latter motion to sue on an expedited basis, forgetting all this and later claiming, in September 2003, that he did not cast a purported vote in favor of the motion, whether due to memory loss or a willful attempt to be obstructionist;

(d) Signed public petitions opposing the very Reform Agreement litigation that he had earlier cast a purported vote to pursue, thereby undermining MHSAA's credibility;

(e) Made false and disparaging statements about MHSAA's leaders and the Reform Agreement litigation; and,

(h) Engaged in constant heckling, badgering, and disruption of Board meetings solely to annoy the Board leadership and obstruct MHSAA business, to a degree where he has had to be repeatedly warned to come to order, and on one occasion nearly being removed, being tolerated solely because MHSAA's leadership have bent over backwards to treat him with understanding of his diminished health and advanced age.

193. Plaintiff Ralph Fink signed a public petition opposing the MHSAA Reform Agreement litigation in the fall of 2003 though he does not appear to have apprised himself of even the most basic facts related to it. While now claiming to be an MHSAA Director and suing MHSAA to seek a position on the MHSAA Board, Fink has otherwise not once in eight years attended even a single MHSAA Board meeting, not even the November 14, 2004 meeting where his purported proxy was produced, the purported proxy itself being an eight-year first.

194. Plaintiff Harvey Deitrich, at the instigation of others, participated in the 2003 Removal Campaign. Deitrich also joined in the Homestead Chapter resolution opposing the Reform Agreement litigation. By all appearances, Deitrich is a kindly gentlemen sadly caught up in these matters, being used by the primary organizers as a pawn. For the most part, Deitrich's purported votes at the key meetings have all been by proxy, and his genial demeanor

renders unseemly the manner in which Purcell and others have embroiled him in these matters at his advanced age.

195. Plaintiff Girard Gaughan harbors a personal grudge against the MHSAA leadership because he was not invited by defendant John Rice in 2003 to serve on one key MHSAA committee, the Strategic Action Committee. Gaughan thus resigned as MHSAA Secretary, in January 2003, and has since then engaged in a petty and vindictive campaign opposing MHSAA's leadership no matter what they do. This includes:

- (a) Participating in the 2003 Removal Campaign;
- (b) Participating in Homestead Chapter resolutions opposing the Reform Agreement litigation and then later denying this by claiming that he is actually in support of MHS reforms;
- (c) Participating with others in so badgering one former MHSAA Officer, Virgil Whitsett, that the Officer resigned from the Board in 2004; and,
- (d) Making false and disparaging statements about MHSAA leaders in various public venues and on several occasions, including at Homestead Chapter meetings.

196. Plaintiff Robert Heist, with but rare exception, has spent virtually the entire term of his tenure as a Director engaging in obstructionist conduct intended to interfere with MHSAA's work, its Reform Agreement enforcement efforts, and its effort to retain its independence. This conduct includes:

- (a) Helping to organize the highly destructive 2003 Removal Campaign;

(b) Making public statements misstating the law as concerns the Reform Agreement litigation, and encouraging destructive and counterproductive campaigns against MHSAA's litigation efforts;

(c) On behalf of MHS, warning the Board that appealing the November 19, 2003 Orphans' Court ruling would result in retribution to the MHSAA Board by MHS;

(d) Concealing information from the Board material to the Board's work, in violation of his fiduciary duties, including as concerns his ongoing discussions with MHS in pursuit of the MHS agenda to control MHSAA;

(e) Concealing information from the Board material to the Board's work, in violation of his fiduciary duties, and asserting a purported "attorney work product" privilege so as to conceal the information, while refusing to disclose who the client asserting that purported privilege is, and otherwise refusing to provide disclosures related thereto; and,

(f) Engaging in a pattern of constant meeting interruptions intended to interfere with MHSAA business.

197. Plaintiff Junior Via participated in a Homestead Chapter resolution calling for withdrawal of the Reform Agreement litigation and attempted to start a fistfight with another Director at the January 30, 2005 MHSAA Board meeting.

198. Plaintiffs have misled others about their positions on the Reform Agreement litigation, including MHSAA members during the 2004 Director elections. As MHSAA's prospects on appeal began to look promising, plaintiffs began to assert that they were actually in

support of reforms, and now claim to have supported reforms all along. The manner in which plaintiffs have concealed their conflicts of interest and true agendas from the MHSAA membership constitutes a deception on MHSAA members. Plaintiffs' actions constitute a kind of stealth take-over of the MHSAA Board, by individuals who are essentially acting on behalf of MHS, in contravention of the wishes of the vast majority of MHSAA members.

199. Plaintiffs' divisive actions have fueled dissension within MHSAA and emboldened MHS to take increasingly drastic punitive measures to harm MHSAA, and plaintiffs have failed to use their influence with MHS to overturn these punitive measures, implying approval of MHS actions that harm MHSAA, in violation of plaintiffs' fiduciary duties to MHSAA to the extent that plaintiffs serve in a fiduciary capacity.

V. MHSAA HAS HAD TO BALANCE MAINTAINING DECORUM AND STABILITY AGAINST DUTIES TO PROTECT ALUMNI WISHES

200. The contentious disputes caused by the MHS efforts to install an anti-reform MHSAA Board, and to take control of the MHSAA Board, have been unseemly and unhealthy for alumni and MHS. The properly constituted MHSAA Board and its duly-elected leadership have had to balance a duty to protect the independence and pro-reform wishes of the vast majority of alumni against a need to avoid, wherever possible, public divisiveness and instability.

201. The restraint shown by MHSAA leaders, including defendants Waters and Rice, President-Elect Chuck Welsh, and other members of the MHSAA Board, and the restraint shown by the majority of alumni who support these MHSAA leaders, has emboldened plaintiffs and those who are working with them.

202. The latter is to a degree where plaintiffs and those working with them have issued physical and financial threats to those who resist them, and otherwise taunt and harass those whom they oppose, while disrupting MHSAA meetings and functions. This conduct is directly encouraged by the actions of MHS, including tens of thousands of pieces of mail disparaging MHSAA pro-reform and pro-independence leaders, in a manner that facilitates the undermining being pursued by plaintiffs and others.

203. The desire by MHSAA to avoid public spectacle is particularly great in regard to the Milton Hershey School community, where stability is very important in the wake of years of unrest. MHSAA has thus sought wherever possible to exercise restraint in response, and to seek amicable compromise on issues of dispute with MHS and with plaintiffs, but without reciprocation from those who are intent on taking control of MHSAA on behalf of MHS at all costs.

204. Requests to Trustees to end the divisiveness have been ignored, since a weakened and compromised MHSAA will silence the only potential voice of dissent as concerns Trustees other than the OAG. This is even when Trustees have been made aware of unlawful MHS conduct, or where the actions intended to undermine MHSAA have led to poorer services to MHS children and young alumni, as with the hiring of Carfagno in a role vital to MHS students and young alumni.

VI. THOSE ALLEGED BY PLAINTIFFS TO BE EMERITUS DIRECTORS ARE NOT DIRECTORS AT ALL

205. MHSAA's By-Laws do not create so-called "Emeritus Directors." The Past President, who sits on the Board by virtue of his prior title, is the only one referred to as an Emeritus Director within the By-Laws. In the past, this was not fully appreciated by the MHSAA Board, since Board turnover was constant, and the matter was previously never an issue of dispute to the degree that anyone examined it closely.

206. Prior to the November 14, 2004 meeting, some Directors believed that although Fink, Deitrich, and Dietrich purportedly served as life-time MHSAA Directors, only two of the three were permitted to vote, in a kind of "gentleman's agreement" the logic of which has never been clearly understood. This matter was never closely reviewed.

207. At the November 14, 2004 meeting, a proxy for Fink was introduced though Fink had not attended a Board meeting in over eight years, though Fink was not apprised of key MHSAA business, and though many Directors were unaware that Fink even claimed to be a voting Director.

208. Plaintiffs' insistence at the November 14, 2004 meeting on "strict interpretation" of the By-Laws as concerns Fink, Dietrich, and Deitrich led to the examination of the By-Laws that ultimately exposed the entire fallacy of earlier perceptions of these three individuals as somehow serving as Directors for life.

209. Once MHSAA became aware that the purported Directorships of Fink, Deitrich, and Dietrich were unauthorized by the MHSAA By-Laws, the Board had an affirmative duty to act on that knowledge as concerns MHSAA business, and did so.

VII. THERE IS NO HONORARY CHAPTER AND PLAINTIFFS CONCEDED THIS THROUGH THEIR COUNSEL

210. MHSAA's By-Laws make clear that there is no Honorary Chapter since any Chapter, to be validly existing, must have 15 "active members," a category from which Honorary members are specifically excluded. The By-Laws also specifically prohibit any Honorary Member from serving as an elected member of the Board.

211. Plaintiffs' counsel explicitly conceded this to MHSAA Director Don Chappell at the January 30, 2005 MHSAA Board meeting, when counsel endorsed the suggestion made to those present, that plaintiffs quickly enlist some active members to join the purported Honorary Chapter, in order to create a claim that the purported Honorary Chapter is in fact duly constituted. Counsel fully acknowledged this flaw in plaintiffs' arguments and did not in the least disclaim it.

212. Plaintiffs' claims as concerns the purported Honorary Chapter are not made in good faith given this admission by counsel.

VIII. FRANCINE SERAFIN FAILED TO ARRANGE PARTICIPATION IN THE NOVEMBER 14, 2004 MEETING AND WAS NOT EVEN AVAILABLE DURING THAT MEETING WHEN ATTEMPTS TO CONTACT HER WERE MADE

213. Directors regularly make accommodations for telephone participation in MHSAA Board meetings, taking upon themselves the duty to be sure their participation by telephone will occur.

214. Directors have an affirmative duty to confirm that arrangements are in place to accommodate their inability or unwillingness to travel to Hershey to attend MHSAA Board meetings in person.

215. Arrangements made by Rice for Director telephone participation have always included his confirmation of the manner in which such participation would occur, which is usually by the Director calling into a conference call number provided by Rice.

216. Directors invariably take the initiative in assuring that their desire to participate by phone would be accommodated, and frequently designate proxies as a back-up to anything going wrong with the telephone arrangement, it being understood that the Director seeking the accommodation bears responsibility for any problems in telephone participation.

217. Where a Director has inadvertently neglected to confirm that their participation by telephone was arranged, they have either called in to the President presiding over the meeting during the meeting, or called in to some other Officer or Director during the meeting, or else understood that they would not be included in the meeting due to their own failure to have made proper arrangements, including by such means as a back-up proxy.

218. No Director desiring to avoid travel to Hershey for a meeting has ever done as little as Francine Serafin did in regard to the November 14, 2004 meeting and then later had a complaint lodged on his/her behalf that they were “excluded” from participation.

219. Serafin has failed to attend in person the vast majority of MHSAA Board meetings, preferring instead to participate by phone, and was thus fully aware of procedures for

participating by phone, and how to assure that her participation was in fact arranged, and that a back-up proxy would be prudent in any event.

220. Serafin did not make adequate efforts to participate by telephone in the November 14, 2004 meeting.

221. Serafin did not confirm that arrangements were made for her to participate in the November 14, 2004 meeting by telephone.

223. Serafin did not write to John Rice at all, did not call Rice, did not obtain confirmation by Rice that he was going to take the initiative on her telephone participation, and otherwise did not have any tangible reason to believe that Rice was obligated to take any step whatsoever to accommodate her desire to participate by telephone in the November 14, 2004 meeting.

224. Serafin merely sent one e-mail to the MHSAA office assistant, Ms. Jill Grimes, asking: "Could you arrange to have JR call me for the Board meeting?" Serafin was never told that the answer to this request was "yes" and thereafter failed to pursue the matter any further, leaving her request unanswered. Serafin's e-mail made clear that she recognized that the meeting could be expected to last four to five hours, or until 5:00 PM.

225. Serafin otherwise took no steps whatsoever to fulfill her duty to assure her participation by phone in the November 14, 2004 meeting.

226. Serafin did not make even a single phone call to the MHSAA office, nor to any MHSAA Director's cellular telephone, nor to then President Rice's cellular telephone, nor to any

other MHSAA Officer's cellular phone, nor otherwise took any step whatsoever to try to participate in the November 14, 2004 Board meeting or in any of the votes conducted at the meeting.

227. During the November 14, 2004 meeting, several phone calls were made to Serafin between 2:00 PM and 4:00 PM seeking to track her down, in advance of key votes, but all were to no avail as Serafin could not be reached, having left her home to attend to personal matters.

228. Rice took no affirmative action of any kind to exclude Serafin's telephone participation but instead simply presided over the November 14, 2004 meeting in the manner he always did.

229. Plaintiffs have no basis for arguing that Serafin had the right to expect Rice to bear any responsibility for contacting her under the circumstances.

230. Serafin's e-mail was in fact forwarded to Rice by the MHSAA office assistant Jill Grimes, and Rice simply overlooked it as he contended with numerous MHSAA duties, at a time when he was traveling outside of Pennsylvania on business and at the offices of one of his clients and thus not even using his own computer.

231. Rice never acknowledged the e-mail in any way, never represented that he would call Serafin, never provided Serafin with a conference number to call, and was never even reminded of the matter after his silence ought to have alerted Serafin that her telephone participation remained unacknowledged.

232. When Rice was asked during the meeting if Serafin had asked him about telephone participation he simply forgot the e-mail that had been forwarded to him, in an innocent mistake that was rendered moot when Serafin could not be located during the meeting.

233. Serafin appears to have simply not pursued the telephone participation on the day in question because she had other things to do, only to have plaintiffs belatedly regret it when they learned that certain votes were closer than anticipated.

234. Serafin failed to take any reasonable measure to assure her own participation by telephone in the November 14, 2004 meeting, and plaintiffs belatedly seek to shift the blame for this to Rice. Plaintiffs are unhappy with the outcome of the vote and are attempting to seize on this matter to mine additional votes after the fact, even though Serafin has not even joined this litigation.

IX. JERRY WATERS WAS DULY ELECTED AS MHSAA VICE-PRESIDENT/PRESIDENT-ELECT AND THUS ACCEDES TO THE PRESIDENCY BY OPERATION OF MHSAA'S BY-LAWS

235. MHSAA's By-Laws provide for the selection of the Vice-President/President-Elect and the next year's President in the same vote, with the Vice President/President Elect automatically commencing his term as President upon the conclusion of the term of the President immediately preceding him or her in that office.

236. Waters was duly elected the 2004 Vice-President/President-Elect and 2005 President in November 2003, by unanimous vote, which included the votes of some of the very plaintiffs who now claim that Waters was improperly chosen.

237. By operation of MHSAA By-Laws, Waters is currently the MHSAA President.

X. PLAINTIFFS VIOLATED MHSAA RULES IN REGARD TO THE 2004 DIRECTOR ELECTION IN AN ATTEMPT TO HELP MHS INSTALL MHSAA OFFICERS THAT MHS CAN CONTROL

238. MHSAA has a strict rule against any use of the alumni mailing database for any mailings not authorized by the Board, and has in the past explicitly prohibited the use of the database for MHSAA elections, a prohibition enforced against one candidate in the 2004 Board of Director election itself.

239. For purposes of MHSAA Director elections, all candidates are allowed equal space in an election mailing that is sent to all alumni, and which includes a ballot for voting by mail for those alumni who do not choose to vote in person at Homecoming.

240. Each and every request for use of the mailing database for purposes of the Director election, including by one candidate who participated unsuccessfully in the 2004 Director election, are categorically denied by MHSAA, pursuant to MHSAA rules.

241. Plaintiff Purcell used the alumni mailing database obtained from an unknown source outside MHSAA, without MHSAA authorization, to endorse candidates deemed more favorable to MHS, with whom Purcell was negotiating a profitable contract, and with whom

Purcell had placed an employee who otherwise would have been laid off. Purcell failed to disclose material facts to alumni to whom he mailed campaign material.

242. Purcell coordinated in this unauthorized mailing with the President of the Homestead Chapter, Jim Gould, the latter of whom has refused to answer questions about how he obtained the mailing database. Gould is subject to MHSAA By-Laws and rules by virtue of his office and membership status.

243. Plaintiffs Gerald Gaughan, Robert Patton, Gerald Long, and Junior Via were all endorsed by Purcell's unauthorized mailing, and were the top vote-getters in the 2004 election.

244. The candidates who followed the rules and did not have the advantage of the mailing database being used to endorse them all finished last.

245. Purcell misled alumni in his mailing endorsing plaintiffs Gaughan, Patton, (Gerald) Long, and Via by failing to make clear that his agenda was to help MHS take control of the MHSAA Board, and that he had direct, material interests that were being advanced through his assistance to MHS in the matter.

246. The 2004 Director election candidates who did not violate MHSAA rules on the use of the database were unfairly disadvantaged, and alumni were misled as to the true motives of Purcell, including his financial interest in assisting MHS in its effort to install MHSAA Directors and Officers that MHS can control.

247. If alumni were properly informed about the mass mailings sent by Purcell, including Purcell's conflicts of interest and the Homestead Chapter's own reasons for aiding

MHS at the expense of MHSAA, and if all 2004 Director election candidates had had equal access to the alumni database by themselves or by those acting on their behalf, plaintiffs Gaughan, Patton, (Gerald) Long, and Via may not have been successful in the MHSAA 2004 Director election.

XI. PLAINTIFFS' MISCONDUCT, AND NOT THE ACTIONS OF THE MHSAA BOARD, WAS SOLELY TO BLAME FOR ANY INABILITY BY ANY CHAPTER TO HAVE A DIRECTOR PRESENT FOR THE 2005 MHSAA BOARD OFFICER ELECTIONS AT THE NOVEMBER 14, 2004 MEETING.

248. MHSAA's By-Laws require that the Chapters conduct elections for the position of Chapter Representative as a condition of designating a Director for the MHSAA Board.

249. After manipulating the MHSAA 2004 Director election as described above, plaintiffs still did not have the votes necessary to achieve their goal of gaining control of the MHSAA Board unless they could also assure themselves of control of the Chapter Representative positions in two Chapters, Homestead and Washington D.C., and in one purported Chapter, the Honorary Chapter. Plaintiffs thus prevented Chapter Representative elections in these Chapters and purported Chapter.

A. WASHINGTON D.C. CHAPTER REPRESENTATIVE ELECTION

250. In order to prevent Washington D.C. Chapter members from having any choice in who the 2005 Washington D.C. Chapter Representative was in advance of the November 14, 2004 MHAAA Board meeting where MHSAA 2005 Officers were to be chosen, plaintiffs

orchestrated a D.C. Chapter election that was a sham, and did not allow anyone to even oppose plaintiff McIntyre for the position.

251. Members of the Washington D.C. Chapter were thus allowed to either vote for McIntyre, or to abstain from voting at all. Efforts to have any competing candidate placed on the ballot were blocked by McIntyre and others working with him.

252. This action has prevented the Washington D.C. Chapter from having any 2005 Chapter Representative until they conduct a proper election.

B. HOMESTEAD CHAPTER REPRESENTATIVE ELECTION

253. In order to prevent Homestead Chapter members from having any choice in who the 2005 Homestead Chapter Representative was in advance of the November 14, 2004 MHSAA Board meeting where MHSAA 2005 Officers were to be chosen, plaintiffs orchestrated a Homestead Chapter election that was a sham.

254. When the Homestead Chapter meeting at which the scheduled election was to be held occurred, plaintiff Purcell and those working with him looked out at those in attendance that evening, and realized that they might not have the votes necessary to lock Purcell into the position of Chapter Representative.

255. Purcell and those working with him thereupon refused to hold any Chapter Representative election under these conditions. Purcell and those working with him thus simply declared, by executive fiat, that they “had just held a special meeting upstairs,” where they

claimed that five of them had decided for the entire Chapter that they wanted to avoid any “embarrassment” that might result from “forcing” someone to run against Purcell.

256. Plaintiff Purcell and those working with him thus claimed they were not required to hold any Chapter Representative election that night, over the objections of Chapter members in attendance, who had come to that scheduled meeting specifically to vote in the Chapter Representative election that was on the agenda for that night.

257. Certain alumni in attendance who complied with Homestead Chapter rules for obtaining membership were also denied the right to become members, simply to block their votes in the event that any vote did come up on any matter that Purcell and his supporters wanted to control.

258. When Chapter members in attendance tried to complain about the refusal to conduct the scheduled Chapter Representative election, they were intimidated, primarily by persons with direct ties to MHS.

259. The conduct of Purcell and those working with him was thus directly responsible for the Homestead Chapter having no 2005 Director present as the Chapter Representative for the 2005 MHSAA Officer elections.

C. HONORARY PURPORTED CHAPTER REPRESENTATIVE ELECTION

260. In order to prevent members of what purports to be the Honorary Chapter from having any choice in who the purported 2005 Chapter Representative of that purported Chapter would be in advance of the November 14, 2004 MHSAA Board meeting where MHSAA

Officers were to be chosen, plaintiff Ethel Campbell and those working with her simply refused to conduct any Chapter Representative election at all, relying on spurious arguments to do so.

261. Campbell and those working with her had earlier removed Campbell's predecessor while he was away on vacation, conducting an impromptu "Chapter Representative" vote in his absence, in November 2003.

262. The same group, in November 2004, claimed that they could not conduct a November 2004 Chapter Representative election because November elections were not allowed by the MHSAA By-Laws, notwithstanding that the year before this presented no impediment to removing Campbell's pro-reform and pro-independence predecessor. They later changed this explanation to instead claim that Campbell, but not her predecessor, served a three-year term in the position, and that Campbell thus did not have to stand for any election at all.

263. Campbell is among the plaintiffs with MHS-related conflicts of interest, as described above.

264. The misconduct of Campbell and those working with her was thus directly responsible for the lack of a purported 2005 Chapter Representative present at the November 14, 2004 meeting for 2005 matters, including 2005 MHSAA Officer votes.

XII. THE BOARD PROPERLY RESPONDED TO PLAINTIFFS' SELF-INTERESTED ATTEMPT TO TAKE CONTROL OF THE MHSAA BOARD AT THE NOVEMBER 14, 2004 BOARD MEETING IN CONTRAVENTION OF PLAINTIFFS' FIDUCIARY DUTIES AND RELYING ON THEIR OWN ELECTION MISCONDUCT TO DO SO

265. Having improperly influenced the 2004 MHSAA Director election by means of an unauthorized mass mailing that violated MHSAA rules and misled MHSAA members, and having blocked any Chapter Representative elections in the Homestead and Washington D.C. Chapters, and in the purported Honorary Chapter, plaintiffs felt that they were in a position to advance their own personal material interests at the expense of MHSAA and in violation of their fiduciary duties to MHSAA by: (i) utilizing these maneuvers to successfully frustrate the will of alumni; and (ii) installing MHSAA Officers and Directors who would not reflect alumni wishes generally, but would instead reflect the wishes of MHS to rid itself of pro-reform and pro-independence MHSAA leaders, and to thereby take control of an MHSAA Board, with certain plaintiffs and those connected to them thereby personally benefiting at the expense of MHSAA.

XIII. THE MHSAA BOARD ACTED IN GOOD FAITH IN EXERCISING ITS JUDGMENT DURING THE NOVEMBER 14, 2004 MEETING

266. The matter of the impropriety in the general election was raised at the November 2004 meeting and sent to committee.

267. The Board was concerned about setting the 2004 MHSAA Director election aside due to the turmoil and public dissension that this would likely create. There were competing grave concerns that not calling for new elections would permit the will of the membership to be defeated, and that an unfair advantage had been given to those candidates who had been endorsed by the improperly used alumni mailing database. The Board tried to balance fairness in elections and the rights of the membership against a desire for decorum and avoidance of undue public rancor.

268. The failure to hold proper 2005 Chapter Representative elections in the Homestead and Washington D.C. Chapters, and in the purported Honorary Chapter, was also raised and discussed.

269. The Board determined that until these two Chapters and purported Chapter conducted proper 2005 Chapter Representative elections, they were in violation of MHSAA By-Laws on designating a Director and thus did not have a Director present for 2005 business, including 2005 Officer elections. Their participation on 2004 business matters was unaffected since they did have a Director present for these purposes.

270. It was believed that the wishes of the Chapter members, and purported Chapter members, were ignored due to the lack of genuine Chapter Representative elections. It was believed it would constitute an impropriety toward the Chapter members, and a violation of MHSAA By-Laws, to allow a group with a minority view to simply usurp control of the Chapters, as had occurred, by failing to conduct proper 2005 Chapter Representative elections.

271. The Chapter Representative misconduct was particularly egregious since plaintiffs appeared to have coordinated their misconduct on the MHSAA Director election with their misconduct on the Chapter and purported Chapter Representative elections, specifically to secure the necessary number of MHSAA Board votes to complete their effort to fully supplant the wishes of alumni generally with their own narrow wishes and the wishes of MHS.

272. Plaintiffs had sought to stack the deck in the Director elections, and also in the Chapter and purported Chapter Representative elections, in violation of MHSAA rules, and then to be allowed to get away with both acts of deck-stacking. The MHSAA Board drew the line at

the Chapter and purported Chapter misconduct, though the MHSAA Director elections were also tainted by MHSAA rule violations. The Board tried to balance fairness in elections and the rights of the membership against a desire for decorum and avoidance of undue public rancor, concluding that ignoring the Chapter Representative election misconduct under these circumstances would be manifestly improper, even if such a conclusion did lead to contentiousness.

273. The matter of Francine Serafin's participation came up during the November 14, 2004 MHSAA Board meeting only in so far as a question was raised in passing as to her participation, as described above, with Serafin not participating and not being located when calls to her were later made.

274. During the meeting, a purported proxy was produced for plaintiff Ralph Fink, who had not appeared at any MHSAA Board meetings in over eight years.

275. Those in support of allowing the Fink purported proxy, in particular plaintiff Robert Heist, insisted that since the By-Laws were silent as to any rule disallowing Fink's purported vote, Fink should be permitted to vote by proxy.

276. After looking at the By-Laws, the proxy was allowed, even though there were very concerned questions about Fink's status as a Director and his eligibility to vote. This provided plaintiffs with an apparent one-vote majority on Officer elections that day.

277. Concerns about Directors, including certain plaintiffs, with conflicts of interest being permitted to participate in matters where their conflicts were at issue had been brought to

the attention of MHSAA Officers in advance of the meeting. In the interests of avoiding contentiousness, these issues were not raised during the meeting.

278. The November 14, 2004 meeting thus went forward and Officer votes were conducted, amidst protests from those who felt that the general election should have been set aside, those who felt that the Chapter Representative election misconduct should have been overlooked, those who questioned the allowing of Fink's purported proxy, and those who had questioned voting by Directors with conflicts of interest. It was the best effort, and good faith and best judgment, of a Board trying to negotiate uncharted territory, and hoping to strike a reasonable balance between the interests of stability and decorum, and fairness to members and Director election candidates.

279. The meeting was contentious and was disrupted several times by plaintiffs and those who attended the meeting to assist plaintiffs in disruption, all from the Homestead Chapter, one of whom had to be ejected, while two plaintiffs were also nearly ejected, one for nearly provoking a fight. The Homestead Chapter group was particularly disruptive and made efforts to intimidate those in attendance who opposed plaintiffs' actions.

280. Officer elections were conducted and plaintiffs Gaughan and Heath appeared to have emerged as Secretary and Treasurer respectively, after motions to elect Chris Ortiz and Jim Behrens in these positions had appeared to have been defeated by one vote each.

281. Chuck Welsh emerged as Vice-President/President-Elect by one vote, the candidate being proposed by plaintiffs, Plaintiff Robert Heist, being so objectionable and so

associated with doing the bidding of MHS to even those considered in plaintiffs' camp that ranks were broken on Heist, and Welsh thereby carried the election.

282. It thereafter emerged that the wishes of MHS to control MHSAA by having Heist serve as the 2005 Vice-President/President-Elect, and hence the 2006 President, were great enough to cause plaintiffs to threaten litigation if they did not get their way on that Officer matter too, with plaintiff Purcell taking the lead in seeking this, in a manner that ultimately back-fired on plaintiffs and MHS.

XIV. PLAINTIFFS' DEMANDS THAT MHSAA BY-LAWS BE IGNORED WERE PROPERLY REJECTED AND INFORMATION OBTAINED FROM RELATED EXAMINATION OF THE BY-LAWS WAS PROPERLY ACTED UPON BY A PRUDENT BOARD ONCE IT BECAME AWARE OF SUCH INFORMATION

283. Immediately after the November 14, 2004 meeting, defendant Jerry Waters and others contacted certain plaintiffs, including McIntyre, seeking to put an end to Board dissension. They were told that plaintiffs intended to commence legal proceedings to remove Welsh and replace him with Heist.

284. Plaintiff Heist, if his actions were known to alumni generally, cannot be said to reflect the wishes of alumni. He has used this litigation to try to seize the position of MHSAA President in 2006, by becoming the 2005 Vice-President/President-Elect and 2006 President through his demands, even though his views and conduct are out of line with what the vast majority of alumni would expect in an MHSAA President.

285. Heist flatly informed defendant Waters that Waters would only be “allowed to keep” the Presidency if Heist were named to the positions he sought, and that otherwise legal proceedings would be commenced against MHSAA. When asked to provide some legal summary of his claims, Heist refused, responding instead with taunts, and arranging meeting disruptions, including at the meetings of December 19th and 26th 2004, and January 30th 2005, the latter of which Heist and his fellow plaintiffs shut down by staging a walk-out and thereby defeating a quorum.

286. Heist has engaged in a consistent pattern of Board obstruction and interference with MHSAA work since becoming a Director in 2003, as described above and including:

(a) Helping to organize the 2003 Removal Campaign in a manner that inflicted great dissension on the Board;

(b) Raising frivolous and time-consuming questions via e-mail and taunting other Directors, including with sarcastic comments intended to annoy;

(c) Raising objections to MHSAA legal positions that strain credulity and appear intended merely to create unwarranted panic among non-attorney Directors, such as suggesting that MHSAA’s attorneys should be required to indemnify the Association against sanctions in regard to the appeal that MHSAA recently won;

(d) Publicly inciting non-Directors to engage in conduct that has undermined MHSAA’s Reform Agreement enforcement goals and wasted vast amounts of MHSAA Director time; and,

(e) Orchestrated the intentional disruption of MHSAA Board meetings, including in coordination with other parties, or through the use of other parties.

287. With the proviso that Heist was completely objectionable as an MHSAA Officer, defendant Waters made every effort to reach a compromise with plaintiffs and thereby end Board dissension and contention, starting prior to the November 14, 2004 MHSAA Board meeting and continuing right up to the weekend before the instant action was filed.

288. For example, Waters voted in line with plaintiffs on several key matters at the November 14, 2004 MHSAA Board meeting. At the December 19, 2004 MHSAA Board meeting, Waters proposed a compromise that included plaintiff Gaughan as Secretary and plaintiff Heath as Treasurer, with Ortiz as Assistant Secretary. Plaintiffs would have nothing to do with this suggestion, since it did not replace Welsh with Heist in the Vice-President/President-Elect position, it being apparent that only Heist was satisfactory to MHS.

289. The threats of litigation seeking to impose Heist on the MHSAA Board as a 2005 Vice-President/President elect and 2006 President led to closer inspection of the By-Laws as to the propriety of MHSAA's actions, and the ability of the Board to defend against any lawsuit that might be brought.

290. This inquiry revealed that plaintiffs Deitrich, Dietrich, and Fink were not Directors for life, as they had claimed, but were actually not Directors at all. Once this was learned, thanks to Heist's having forced the issue, the Board had no option but to act on the knowledge, since anything else would have been a knowing breach of Pennsylvania law, and since only a By-Law amendment could cure the defect.

291. Rice reported this to the Board at the December 19, 2004 meeting, including that this meant a recalculation of votes properly cast at the November 14, 2004 meeting, and the concomitant result that Chris Ortiz and Jim Behrens were thereby selected as the Secretary and Treasurer respectively on the initial motions concerning those Officer positions.

292. The threat of litigation seeking to impose Heist on the MHSAA Board as an Officer thus triggered the very inquiry that made Heist's bid for the Officer position even weaker, and that ultimately also revealed that Ortiz and Behrens had actually been successful in the motions on their respective positions.

293. The December 19, 2004 meeting was also contentious, with plaintiffs and their supporters again organizing disruptions. These disruptions eventually required the Derry Township police to come and remove approximately 15 to 20 supporters of plaintiffs, all from the Homestead Chapter, as described above.

294. At all times, it was plaintiffs' over-reaching, refusals to resolve differences amicably, and threats of litigation that brought about the inquiries that ultimately showed that plaintiffs had been availing themselves of By-Law violations, even while alleging that the Board and defendants Waters and Rice were the ones violating the By-Laws. Plaintiffs' own actions triggered closer inspection of MHSAA's By-Laws, thereby placing themselves in an even worse position than before they threatened litigation. Plaintiffs' primary complaint, in the end, became that the Board was at fault for not ignoring the By-Laws and for not simply allowing spurious Director positions which are unauthorized by the By-Laws. To this end, meritless arguments were made, consisting primarily of strained claims about "family" together with flat out bullying and intimidation, including open physical threats in several instances.

295. Adherence by the Board to the By-Laws was prudent, proper, and undertaken in good faith. In fact, adherence to the By-Laws led the Board to refrain from naming additional purported Directors at the December 19, 2004 meeting within the spurious “Emeritus” category urged by plaintiffs, the Board recognizing that that this would have simply added one impropriety to another. Instead, the Officers pointed out that the By-Laws needed to be cleaned up on these issues and put into order, including with term limits included if “Emeritus Director” positions were created, but the plaintiffs’ filibustering, disruptions, and objections rendered any effort to address the By-Laws futile, as plaintiffs orchestrated a near shut-down of business at the December 19, 2004 meeting.

XV. THE RESOLUTION PASSED AT THE DECEMBER 26, 2004 MEETING WAS A REASONABLE MEANS UNDERTAKEN IN GOOD FAITH BY WHICH THE BOARD SOUGHT TO ASSURE THAT PLAINTIFFS DO NOT BENEFIT FROM THEIR OWN WRONGDOING

296. MHSAA is within its rights, and is indeed duty-bound, to provide members with an opportunity to elect Directors who reflect the wishes of members in a fair election that is not tainted by deception and violation of MHSAA rules prohibiting the use of the alumni database for purposes of influencing the elections.

297. MHSAA is within its rights, and is indeed duty-bound, to provide all candidates with an opportunity to compete in Director elections on an even playing field, with no violations of the MHSAA rules on use of the alumni database, and with members fairly informed on all issues and not subject to deception.

298. The resolution passed at the December 26, 2004 Board meeting does not remove any properly-elected Director, and will have no effect on plaintiffs should MHSAA's members elect them in an election where all candidates have equal access to the alumni mailing database and no violations of MHSAA rules are committed by or on behalf of any candidate.

299. Many alumni who voted for the slate of candidates endorsed by the improper election mailing sent out by Purcell were misled into thinking that the endorsed slate was actually endorsed by MHSAA's then Officers, since mass mailings are prohibited other than when they are authorized by the Board.

300. The violation of MHSAA rules by Homestead Chapter members and the Homestead Chapter President on the use of the alumni mailing database in order to elect a slate of Homestead Chapter Directors was unfair to MHSAA members generally, to other MHSAA Chapters, and to the candidates who were not aided by MHSAA rule violations, and to those MHSAA members who supported the candidates who were not aided by MHSAA rule violations.

XVI. THERE IS NO IRREPERABLE HARM FROM DENYING INJUNCTIVE RELIEF

301. MHSAA is currently pursuing its ordinary business as well as possible given that it is being sued by plaintiffs and continually pressured by MHS to surrender its independence.

Examples of MHSAA's continuing to function properly include:

(a) MHSAA is successfully organizing, together with MHS, the upcoming Alumni Senior Fellowship Dinner, an annual event held for the Milton Hershey School senior class.

(b) MHSAA is in the midst of sending out its latest newsletter, recently completed, while planning a special edition to announce the recent appellate victory so important to virtually all alumni other than plaintiffs.

(c) MHSAA is currently organizing its largest annual fundraiser, the Heritage Golf tournament, scheduled for May 20, 2005.

(d) MHSAA is working with the Philadelphia Chapter in organizing that Chapter's annual golf tournament, scheduled for the end of April.

(e) MHSAA is in the process of an ongoing effort to help a critically ill alumna and her severely disabled child.

(f) MHSAA is continuing to operate the Association's website, the electronic town square for alumni from all generations.

(g) MHSAA is expanding its Young Graduate Committee outreach and related Young Graduates' website, under the leadership of Chris Ortiz.

(h) MHSAA is expanding an outreach program to alumni in crisis, under the leadership of Director Dr. Chuck Hill, the New York Chapter Representative.

(i) MHSAA is preparing to defend its landmark Commonwealth Court ruling against challenge by the OAG and MHS at the Pennsylvania State Supreme Court.

302. Plaintiffs have collectively failed to take any meaningful steps in furtherance of the above-mentioned MHSAA service roles, but have instead obstructed and interfered with virtually all of them.

303. MHSAA will be harmed if plaintiffs' injunction is granted because it will disrupt all of the above-described MHSAA service functions. The Directors who have not joined this suit are the very Directors who have spent their time and energy on the MHSAA service functions described above, while plaintiffs have either done nothing to advance these functions, or else have openly interfered with them.

304. For example, if plaintiffs are successful in their injunctive request to remove Director Ortiz, MHSAA's outreach to young alumni will be immediately harmed, and the injunction would thus hurt MHSAA rather than prevent harm.

305. Similarly, replacement of the current MHSAA Officers, all of whom have helped MHSAA to quietly and carefully continue to pursue the Reform Agreement enforcement efforts, with a group of MHS-selected and MHS-controlled replacements who have strenuously opposed the reform effort and done everything possible to defeat it, would undermine, immediately, among the most important achievements by MHSAA to date, the recent Commonwealth Court decision on allowing MHSAA to argue for restoration of the Reform Agreement. To place the conduct of MHSAA's continued reform efforts in the hands of plaintiffs, by equitable order, would without doubt damage MHSAA's interests irreparably, because these plaintiffs include persons who for over two years have done everything in their power to prevent MHSAA from ever achieving the landmark victory it recently won, though they have recently attempted to distance themselves from this pattern of conduct.

XVII. ADDITIONAL NEW MATTER ALLEGATIONS

306. Defendants incorporate herein their answers to paragraphs 1-127 of plaintiffs' complaint as if fully set forth herein.

307. Plaintiffs fail to state any cause of action.

308. Plaintiffs' conduct bars them from seeking equitable relief under the doctrine of unclean hands.

309. Defendants' actions were all taken in good faith and complied with MHSAA By-Laws such that Pennsylvania law will not set these actions aside due to the deference afforded these actions within the business judgment rule.

310. Defendants' actions were all in compliance with MHSAA By-Laws and Pennsylvania law.

311. Plaintiffs' request to enjoin MHSAA to reconvene the November 14, 2004 meeting to allow Francine Serafin to participate is without any legal or factual support.

312. Plaintiffs' request to enjoin MHSAA to reconvene the November 14, 2004 meeting to allow Milton Purcell, Ethel Campbell, and Graham McIntyre to participate is without any legal or factual support.

313. Plaintiffs' request to enjoin MHSAA to reconvene the November 14, December 19, and December 26, 2004 meetings to disallow Jerry Waters from participating in those meetings is without any legal or factual support.

314. Plaintiffs' request to enjoin MHSAA to reconvene the November 14, December 19, and December 26, 2004 meetings to allow Harvey Deitrich, Ralph Fink, and Ivan Dietrich to participate in those meetings as Emeritus Directors is without any legal or factual support.

315. Plaintiffs' request to enjoin MHSAA from implementing the December 26, 2004 meetings is without any legal or factual support.

316. Plaintiffs' request to enjoin MHSAA from allowing the Executive Committee of the Board of Directors to take any actions on behalf of MHSAA is without any legal or factual support.

317. The relief requested by Plaintiffs is overly broad, vague, and not tailored to request the minimum equitable and injunctive relief necessary to address the harm being alleged, all of which is denied by the Defendants.

318. To the extent the relief requested by Plaintiffs seeks to reform the Bylaws of the Association to order the relief requested, Plaintiffs have not stated any cause of action for reformation.

319. Plaintiffs are not entitled to injunctive relief, as they have an adequate remedy at law.

320. Plaintiffs are not entitled to request reimbursement of attorney fees.

WHEREFORE, defendants respectfully request that this Honorable Court enter an order:

(a) Denying all of plaintiffs' requests for equitable relief;

- (b) Denying all of plaintiffs' requests for the expenses of this litigation, including their request for attorneys' fees;
- (c) Requiring plaintiffs to reimburse defendants for all defendants' expenses related to this litigation, including attorneys' fees and costs; and,
- (d) Such other relief as this Honorable Court may deem appropriate.

Respectfully submitted,

Counsel for Defendants

VICTOR P. STABILE, ESQUIRE
Attorney I.D. No. 37449
Dilworth Paxson LLP
112 Market Street, Suite 800
Harrisburg, PA 17101
Tel.: 717-236-4812
Fax: 717-236-7811

JOHN W. SCHMEHL, ESQUIRE
Attorney I.D. No. 27888
Dilworth Paxson LLP
1735 Market Street, Suite 3200
Philadelphia, PA 19103
Tel.: 215-575-7201
Fax: 215-575-7200

F. FREDERIC FOUAD, ESQUIRE
230 Park Avenue, Suite 625
New York, NY 10169
Tel.: 212-687-8534
Fax: 212-687-8535

Dated: March 4, 2005