

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

The Culver Educational Foundation, an Indiana not-for-profit corporation,

Plaintiff,

v.

C. Daniel Blythe, Michael X. Cronin, John F. Calhoun, Michael J. Sullivan, Ronald V. Kazmar, individually and as Trustees of the James R. Lowenstine Trust Dated August 17, 1981 and the Conserve School Trust thereunder, Rush University Medical Center, an Illinois not-for-profit corporation, doing business as Rush Medical College of Rush University, Conserve School Corporation, a Wisconsin not-for-profit corporation, Conserve Community LLC, a Wisconsin limited liability company, Julie Leizerman, individually and as parent and natural guardian of Kegan Leizerman, Patricia A. Lins and Lawrence Sutter, individually and as parent and natural guardian of Lena Lins Sutter, Alice L. Ackerman and Timothy P. Ackerman, individually and as parent and natural guardian of Margaret E. A. Ackerman, Juely K. Bartholomew and Timothy J. Bartholomew, individually and as parent and natural guardian of Katherine Alison Bartholomew, Joan Krull, individually and as parent and natural guardian of Brendan Krull, Kenneth Alan Bussart, individually and as parent and natural guardian of Opal Yvonne Bussart, Sharon Kyle Bourgeois and Robert Colme Bourgeois, individually and as parent and natural guardian of Henry Kyle Bourgeois, Mary Hermes, individually and as parent and natural guardian of John Lee Hermes and Bineshii Hermes Roach, Sarah Weitz Klammer and John S. Klammer, individually and as parent and natural guardian of Katherine Klammer, Dawn Korinek and Thomas Korinek, individually and as parent and natural guardian of Emma Korinek, Deb Crawford and Colin Crawford, individually and as parent and natural guardian of Thomas Crawford, Mary Elizabeth Boswell, individually and as parent and natural guardian of Briana Pagos, Steve Danelski, individually and as parent and natural guardian of Irissa Danelski, Marguerite Macy and Michael Macy, individually and as parent and natural guardian of Willow Macy, William R. Meier, Jr., individually and as parent and natural guardian of William R. Meier III, Katrina Maria Billin and Jeffrey Lee Billin, individually and as parent and natural guardian of Ashley Rose Spoelhof, Veronica Flores and Nicholas Flores, individually and as parent and natural guardian of Jasmine Flores, Angela P. Dohl and Jeff R. Dohl, individually and as parent and natural guardian of Greta Josephine Dohl, Denise Sauter and Charles Sauter, individually and as parent and natural guardian of Emma Susan Sauter (collectively the "Conserve School Parents"),

Defendants.

FILED: MARCH 5, 2009

: 09CV1413

: JUDGE ANDERSEN

: MAGISTRATE JUDGE COLE

: EDA

: No.

## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff THE CULVER EDUCATIONAL FOUNDATION (the “Foundation”), by its undersigned attorneys and for its Complaint for Declaratory and Injunctive Relief and Damages against defendants C. DANIEL BLYTHE, MICHAEL X. CRONIN, JOHN F. CALHOUN, MICHAEL J. SULLIVAN and RONALD V. KAZMAR (collectively the “Trustees”) of the James R. Lowenstine Trust Dated August 17, 1981 (the “Trust”) and the Conserve School Trust thereunder (the “Conserve School Trust”), RUSH UNIVERSITY MEDICAL CENTER doing business as RUSH MEDICAL COLLEGE of RUSH UNIVERSITY (“Rush”), CONSERVE SCHOOL CORPORATION (the “Conserve School”), CONSERVE COMMUNITY LLC (the “Conserve Community”) and the CONSERVE SCHOOL PARENTS, states as follows:

### **NATURE OF ACTION**

1. This is an action for declaratory and injunctive relief to protect the rights and interests of the Foundation as a beneficiary of the Conserve School Trust. As detailed below, the Trustees of the Conserve School Trust have recently taken actions that directly violate the obligations imposed on them under the trust document and that constitute a breach of the Trustees’ fiduciary obligations to the Foundation.

2. By this complaint, the Foundation seeks an order: (a) declaring that the Trustees’ actions violate the plain language of the trust document; (b) directing the Trustees to distribute the Conserve School Trust’s assets to the Foundation as provided in the trust document; and (c) preliminarily and permanently enjoining the Trustees from distributing any additional principal or income of the Conserve School Trust to the Conserve School. The Foundation also seeks to recover damages as a result of the Trustees’ failure to manage and invest the Conserve School Trust’s assets as would a prudent investor, in further breach of their fiduciary duties.

## **PARTIES**

3. The Foundation is an Indiana not-for-profit corporation with its principal place of business located in Culver, Indiana. The Foundation supports the Culver Academies in Culver, Indiana, which are college preparatory boarding schools for students in grades nine through twelve.

4. Each of C. Daniel Blythe, Michael X. Cronin, John F. Calhoun, Michael J. Sullivan and Ronald V. Kazmar is a Trustee of the Trust and of the Conserve School Trust and each is a citizen of the State of Illinois. The Conserve School Trust is a trust created pursuant to the terms of the Trust.

5. Rush is an Illinois not-for-profit corporation with its principal place of business located in Chicago, Illinois.

6. The Conserve School is a Wisconsin not-for-profit corporation established by the Trustees on June 6, 1997 for the purpose of owning and operating the Conserve School.

7. The Conserve Community is a Wisconsin limited liability company formed by the parents of the Conserve School's students. None of the Conserve Community's members is a citizen of Indiana.

8. Julie Leizerman is a parent and natural guardian of Conserve School student Kegan Leizerman. Julie Leizerman is a citizen and resident of Ohio.

9. Patricia A. Lins and Lawrence Sutter are the parents and natural guardians of Conserve School student Lena Lins Sutter. Patricia A. Lins and Lawrence Sutter are citizens and residents of Michigan.

10. Alice L. Ackerman and Timothy P. Ackerman are the parents and natural guardians of Conserve School student Margaret E. A. Ackerman. Alice L. Ackerman and Timothy P. Ackerman are citizens and residents of Wisconsin.

11. Juely K. Bartholomew and Timothy J. Bartholomew are the parents and natural guardians of Conserve School student Katherine Alison Bartholomew. Juely K. Bartholomew and Timothy J. Bartholomew are citizens and residents of Illinois.

12. Joan Krull is the parent and natural guardian of Conserve School student Brendan Krull. Joan Krull is a citizen and resident of California.

13. Kenneth Alan Bussart is the parent and natural guardian of Conserve School student Opal Yvonne Bussart. Kenneth Alan Bussart is a citizen and resident of Minnesota.

14. Sharon Kyle Bourgeois and Robert Colme Bourgeois are the parents and natural guardians of Conserve School student Henry Kyle Bourgeois. Sharon Kyle Bourgeois and Robert Colme Bourgeois are citizens and residents of Wisconsin.

15. Mary Hermes is the parent and natural guardian of Conserve School students John Lee Hermes and Bineshii Hermes Roach. Mary Hermes is a citizen and resident of Wisconsin.

16. Sarah Weitz Klammer and John S. Klammer are the parents and natural guardians of Katherine Klammer. Sarah Weitz Klammer and John S. Klammer are citizens and residents of Minnesota.

17. Dawn Korinek and Thomas Korinek are the parents and natural guardians of Conserve School student Emma Korinek. Thomas and Dawn Korinek are citizens and residents of Minnesota.

18. Deb Crawford and Colin Crawford are the parents and natural guardians of Conserve School student Thomas Crawford. Deb and Colin Crawford are citizens and residents of Wisconsin.

19. Mary Elizabeth Boswell is the parent and natural guardian of Conserve School student Briana Pagos. Mary Elizabeth Boswell is a citizen and resident of Illinois.

20. Steve Danelski is the parent and natural guardian of Conserve School student Irissa Danelski. Steve Danelski is a citizen and resident of Wisconsin.

21. Marguerite Macy and Michael Macy are the parents and natural guardians of Conserve School student Willow Macy. Marguerite Macy and Michael Macy are citizens of Great Britain and residents of England.

22. William R. Meier, Jr. is the parent and natural guardian of Conserve School student William R. Meier III. William R. Meier, Jr. is a citizen and resident of Wisconsin.

23. Katrina Maria Billin and Jeffrey Lee Billin are the parents and natural guardians of Conserve School student Ashley Rose Spoelhof. Katrina Maria Billin and Jeffrey Lee Billin are citizens and residents of Michigan.

24. Veronica Flores and Nicholas Flores are the parents and natural guardians of Conserve School student Jasmine Flores. Veronica Flores and Nicholas Flores are citizens and residents of Illinois.

25. Angela P. Dohl and Jeff R. Dohl are the parents and natural guardians of Conserve School student Greta Josephine Dohl. Angela P. Dohl and Jeff R. Dohl are citizens and residents of Michigan.

26. Denise Sauter and Charles Sauter are the parents and natural guardians of Conserve School student Emma Susan Sauter. Denise Sauter and Charles Sauter are citizens and residents of Wisconsin.

27. The Conserve Community and the Conserve School Parents purport to have an interest in the Conserve School Trust, and, on information and belief, seek to modify its terms. The Foundation disputes that the Conserve Community and the Conserve School Parents have an interest in the Conserve School Trust or standing to seek to modify the terms of the Conserve School Trust.

### **JURISDICTION AND VENUE**

28. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a), as the plaintiff is a citizen of Indiana and none of the defendants is a citizen of Indiana and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest or costs of suit.

29. This Court also has personal jurisdiction over the Conserve Community and the Conserve School Parents who are not citizens of Illinois under the Illinois Long-Arm Statute, 735 ILCS 5/2-209(c).

30. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(a) because the events that are the basis of this action occurred in this judicial district.

### **FACTUAL BACKGROUND**

#### **The Relevant Terms of the Trust**

31. James R. Lowenstine, deceased, established the Trust while he was a resident and citizen of the State of Illinois. He executed and published a Second Restatement of the Trust on September 19, 1995 in the State of Illinois. A true and correct copy of the Second Restatement of the Trust (the "Trust Instrument") is attached as Exhibit A.

32. Mr. Lowenstine died on January 4, 1996, a resident of the State of Illinois. The Trust became irrevocable upon Mr. Lowenstine's death.

33. At and since the time of Mr. Lowenstine's death, the Trust has owned a majority of the voting shares of Central Steel and Wire Company ("CSW"), a Delaware corporation with its principal place of business in the City of Chicago, Illinois. At all relevant times, the principal asset held by the Trust has been shares of the voting stock of CSW.

34. CSW is engaged in the business of a steel service center and it is a distributor of steel products to others, including manufacturers. CSW also distributes some non-ferrous metal products to manufacturers.

35. In relevant part, the Trust Instrument provides that after Mr. Lowenstine's death and so long as the Trust owns a controlling interest in CSW, those individuals who serve from time to time as directors of CSW (with the specific exclusion of one director of CSW), shall, by virtue of such status, also serve as the Trustees of the Trust.

36. The Trust Instrument provides for certain specific pre-residuary distributions upon the death of Mr. Lowenstine to named beneficiaries, which distributions are not at issue in this action.

37. The Trust Instrument further provides that after making the aforementioned distributions, the balance of the Trust was to be held by the Trustees in a separate trust to be known as the "Conserve School Trust."

38. In the Trust Instrument, Mr. Lowenstine provided a distribution plan and an alternative distribution plan for the Conserve School Trust.

39. Under the distribution plan, the Trust Instrument directed that, if certain conditions were met, the Conserve School Trust income and some Conserve School Trust

principal would be used to establish and operate a school to be named the Conserve School which would be located in northern Wisconsin. Specifically, the Trust Instrument directs in Article VI, Paragraph B that the School was to be for “*the regular enrollment of students beginning with the seventh grade, and extending, in the discretion of the trustees, through high school.*” (emphasis added).

40. The Trust Instrument further directs that students enrolled at other schools are not permitted to attend the Conserve School or its programs during regular school hours. Specifically, under Article VI, Paragraph K, “students who are enrolled in public or private schools may be permitted to enroll in the Conserve School *to receive tutorial instruction after such students’ regular school hours or on Saturdays and school holidays, and during summer vacations.*” (emphasis added).

41. The Trust Instrument directs in Article VI, Paragraph M the implementation of the alternate distribution plan “if for any . . . reason the trustees determine at any time that it is legally impossible or otherwise impractical to operate the Conserve School . . . .” Under the alternate distribution plan, the Trustees are directed to sell the shares of CSW owned by the Conserve School Trust, and then, subject to certain conditions, distribute a specified sum to Rush and then, subject to certain conditions which have been satisfied, distribute the balance of the Conserve School Trust assets to the Foundation. Mr. Lowenstine was a graduate of the four-year Culver Military Academy high school.

42. On information and belief, the Trustees know that a sale of the shares of CSW could affect their positions as directors and management employees of CSW.



**The Conserve School Commences Formal Instruction and Operation.**

43. In September 2002, the Conserve School commenced formal instruction and operation, and until very recently, as more fully discussed below, the Conserve School operated as a four-year college preparatory boarding school for grades nine through twelve. The Trustees have acknowledged that the Trust Instrument establishes that Mr. Lowenstine intended for the Conserve School to be a four-year college preparatory school, similar to the Culver Academies. For example, Trustee Ronald V. Kazmar told the Indiana newspaper the *Pilot News* in a June 6, 2007 article: “It was Mr. Lowenstine’s desire to set up a college preparatory boarding school for gifted students much like Culver.”

**The Trustees Decide to Close the Conserve School  
As a Four-Year College Preparatory Boarding School.**

44. On January 30, 2009, the Trustees and the headmaster of the Conserve School notified the Conserve School’s students and their parents that, due to the impact of the economic downturn, the Trustees had decided that the Conserve School will cease to exist as a four-year boarding school beginning in the 2009-2010 academic year. Instead, beginning in the 2009-2010 academic year, the Trustees will use the Conserve School Trust’s assets to operate the Conserve School as a semester away program for high school juniors only, similar to a semester abroad program.

45. As a result of the Trustees’ decision to close the Conserve School and start a semester away program for high school juniors, the student body will drop from 150 students to 30 to 45 students each semester.

46. The Trustees’ decision to close the Conserve School and to open a semester away program for high school juniors is directly contrary to the plain terms of Article VI, Paragraph B

and/or Article VI, Paragraph K of the Trust Instrument, and contrary to the plain terms of Article VI, Paragraph M of the Trust Instrument, described above.

47. On account of the Trustees' actions in direct violation of the terms of the Trust Instrument, the Foundation brings the following claims and seeks the following relief.

**COUNT I**  
**DECLARATORY JUDGMENT**

48. The Foundation repeats and realleges paragraphs 1 through 47 as though set forth fully herein.

49. As established above, the Trustees' decision to close the Conserve School, a four-year college preparatory boarding school for grades nine through twelve, and to open a semester away program for high school juniors violates Article VI, Paragraph B and/or Article VI, Paragraph K of the Trust Instrument. As further established above, the Trustees' failure to implement the alternate distribution plan violates Article VI, Paragraph M of the Trust Instrument.

50. The Trustees have taken the position that their closing of the Conserve School and their opening of a semester away program for high school juniors does not violate either Article VI, Paragraph B or Article VI, Paragraph K of the Trust Instrument. Accordingly, the Trustees have publicly expressed their intention not to implement the alternate distribution plan set forth in Article VI, Paragraph M of the Trust Instrument.

51. As a result of the foregoing, there exists an actual, ripe and justiciable controversy between the Foundation, on the one hand, and the Trustees, on the other hand, regarding whether the Trustees' closing of the Conserve School and opening of a semester away program for high school juniors violates Article VI, Paragraph B and/or Article VI, Paragraph K of the Trust

Instrument, and whether the Trustees are legally obligated to implement the terms of the alternate distribution plan set forth in Article VI, Paragraph M of the Trust Instrument.

52. The Court should resolve the parties' dispute by (a) declaring that the closing of the Conserve School as a four-year college preparatory boarding school for grades nine through twelve and the opening of a semester away program for high school juniors violates Article VI, Paragraph B and/or Article VI, Paragraph K of the Trust Instrument; (b) declaring that it has become legally impossible or otherwise impractical to operate the Conserve School; and (c) declaring that the Trustees are legally obligated to implement the terms of the alternate distribution plan set forth in the Trust Instrument including but not limited to selling all shares of CSW and distributing all of the Conserve School Trust's assets to the Foundation as provided in the alternate distribution plan.

**COUNT II**  
**BREACH OF FIDUCIARY DUTY I**

53. The Foundation repeats and realleges paragraphs 1 through 47 as though set forth fully herein.

54. By accepting the office of Trustee upon Mr. Lowenstine's death, each of the Trustees, and the Trustees collectively, assumed and accepted the fiduciary duty to administer the Conserve School Trust in accordance with its terms for the sole benefit of the beneficiaries of the Conserve School Trust.

55. The Trustees' duty to administer the Conserve School Trust in accordance with the terms of the Trust Instrument is a duty owed by the Trustees to the Foundation as a beneficiary under the alternate distribution plan set forth in the Trust Instrument.

56. The Trustees have breached their fiduciary duties to the Foundation by (a) closing the Conserve School and opening a semester away program for high school juniors in flagrant

disregard of the obligations imposed on them by both Article VI, Paragraph B and Article VI, Paragraph K of the Trust Instrument; (b) wrongfully distributing the Conserve Trust's assets to operate a semester away program for high school juniors; and (C) failing to implement the terms of the alternate distribution plan set forth in Article VI, Paragraph M of the Trust Instrument.

57. The foregoing breaches of the Trustees' fiduciary duties threaten the Foundation as a beneficiary under the alternate distribution plan with irreparable harm for which it has no adequate remedy at law, as, on information and belief, the Trustees would be unable to pay the substantial monetary damages stemming from their wrongful distribution of the Conserve Trust's assets. In addition, due to the lack of resources from the Conserve Trust to which it is now entitled, the Foundation is losing goodwill, as the Foundation would be using the resources of the Conserve Trust to further bolster its favorable reputation in the community.

58. For the foregoing reasons, the Trustees should be (a) preliminarily and permanently enjoined from distributing any additional principal or income of the Conserve School Trust to the Conserve School and preliminarily and permanently enjoined from distributing any additional assets of the Conserve School; and (b) directed to comply with the terms of the alternate distribution plan set forth in the Trust Instrument including but not limited to selling the shares of CSW and distributing the Conserve School Trust's assets to the Foundation as provided in the alternate distribution plan. In addition, the Court should impose a constructive trust in favor of the Foundation upon any principal or income of the Conserve School Trust that has been distributed to the Conserve School, and upon any money that the Conserve School itself has distributed, since the Trustees' decision to close the Conserve School and to open a semester away program for high school juniors.

**COUNT III**  
**BREACH OF TRUST**

59. The Foundation repeats and realleges paragraphs 1 through 47 as though set forth fully herein.

60. By reason of the Trustees' decision to close the Conserve School and to open a semester away program for high school juniors, the Trustees have breached the obligations imposed upon them under Article VI, Paragraph B and Article VI, Paragraph K of the Trust Instrument.

61. By reason of the Trustees' failure to implement the terms of the alternate distribution plan set forth in the Trust Instrument, the Trustees have breached the obligations imposed on them under Article VI, Paragraph M of the Trust Instrument.

62. The foregoing breaches of the Trust Instrument have caused the Trustees damages in an amount equal to at least the principal and/or income of the Conserve School Trust that has been wrongfully distributed to the Conserve School, plus an amount equal to at least the amount of money that the Conserve School itself has wrongfully distributed, since the Trustees' decision to close the Conserve School and to open a semester away program for high school juniors. These damages substantially exceed \$75,000.

**COUNT IV**  
**BREACH OF FIDUCIARY DUTY II**

63. The Foundation repeats and realleges paragraphs 1 through 42 and paragraphs 54 and 55 as though set forth fully herein.

64. By accepting the office of Trustee upon Mr. Lowenstine's death, each of the Trustees, and the Trustees collectively, assumed and accepted the fiduciary duty to manage and invest the Conserve School Trust's assets as would a prudent investor, including an obligation to

diversify assets and to sell assets which are not prudent for a trustee to hold. Indeed, the Trustees are granted the power under the Trust Instrument to sell the shares of CSW held by the Conserve School Trust.

65. The Trustees' fiduciary duty to manage and invest the Conserve School Trust's assets as would a prudent investor subject to the terms of the Trust Instrument is a duty owed by the Trustees to the Foundation as a beneficiary under the alternate distribution plan set forth in the Trust Instrument.

66. Upon information and belief, since approximately the third quarter of 2008, the profitability of CSW has deteriorated, resulting in a diminution in the value of its shares and diminution of dividends payable to shareholders.

67. Beginning in 2008 and continuing to the present, the Trustees have breached their fiduciary duties to the beneficiaries of the Trust by continuing to allow the trust to be over-concentrated in the stock of a single company, CSW.

68. Beginning in 2008 and continuing to the present, the Trustees have further breached their duty to properly manage the Conserve School Trust's assets for the benefit of its beneficiaries by not selling the Conserve Trust's shares in CSW.

69. The Trustees' failure since 2008 to sell the CSW shares owned by the Conserve School Trust has resulted in the Trustees' continued control over CSW, allowing their continued employment as management employees and directors of CSW.

70. As a result of the Trustees' foregoing breaches of their fiduciary duties, the value of the Conserve School Trust's assets has been substantially diminished, and the Foundation, as a beneficiary under the alternate distribution plan, has been damaged substantially in excess of \$75,000.

## **PRAYER FOR RELIEF**

WHEREFORE, the Foundation respectfully requests that the Court enter judgment in the Foundation's favor and:

A. Declare that the Trustees' decision to close the Conserve School as a four-year college preparatory boarding school for grades nine through twelve and to open a semester away program for high school juniors violates the Trust Instrument;

B. Declare that it has become legally impossible or otherwise impractical to operate the Conserve School;

C. Declare that the Trustees are legally obligated to implement the terms of the alternate distribution plan set forth in the Trust Instrument including but not limited to selling all shares of CSW and distributing all of the Conserve School Trust's assets to the Foundation as provided in the alternate distribution plan;

D. Direct the Trustees to comply with the terms of the alternate distribution plan set forth in the Trust Instrument including but not limited to selling the shares of CSW and distributing the Conserve School Trust's assets to the Foundation as provided in the alternate distribution plan;

E. Preliminarily and permanently enjoin the Trustees from distributing any additional principal or income of the Conserve School Trust to the Conserve School, and preliminarily and permanently enjoin the Trustees from distributing any additional assets of the Conserve School;

F. Impose a constructive trust in favor of the Foundation upon any principal or income of the Conserve School Trust that has been distributed to the Conserve School, and upon

any money that the Conserve School itself has distributed, since the Trustees' decision to close the Conserve School and to open a semester away program for high school juniors;

G. Award to the Foundation and against the Trustees damages in excess of \$75,000 resulting from the Trustees' breaches of the Trust Instrument;

H. Award to the Foundation and against the Trustees damages in excess of \$75,000 resulting from the Trustees' breach of their duties to manage and invest the Conserve School Trust's assets as would a prudent investor; and

I. Award to the Foundation its attorney fees and such other and further relief as is appropriate under the circumstances.

Dated: March 5, 2009

Respectfully submitted,

THE CULVER EDUCATIONAL FOUNDATION

By: s/ Mark H. Horwitch  
One of Its Attorneys

Gino L. DiVito (ARDC No. 643831)  
Mark H. Horwitch (ARDC No. 6272427)  
John M. Fitzgerald (ARDC No. 6282859)  
TABET DIVITO & ROTHSTEIN, LLC  
209 S. LaSalle Street, 7th Floor  
Chicago, IL 60604  
Tel: (312) 762-9450  
Fax: (312) 762-9451