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Proceedings of the One Hundred Nineteenth Annual Meeting of the North Dakota State Bar Association

North Dakota State Bar Association

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PROCEEDINGS OF THE ONE HUNDRED NINETEENTH
ANNUAL MEETING OF THE NORTH DAKOTA
STATE BAR ASSOCIATION

OFFICERS

DARCIE EINARSON..... President
ZACHARY PELHAM..... President-Elect
AUBREY J. FIEBELKORN-ZUGERSecretary-Treasurer
CHARLES DEMAKISImmediate Past President
TONY J. WEILER..... Executive Director

PROCEEDINGS

June 15, 2018

(Whereupon, the meeting commenced at 8:03 a.m.)

MS. EINARSON: Good morning, everyone. I will call this meeting to order. First on our agenda this morning is the Presentation of Colors.

The Presentation of Colors is by Boy Scout Troop 123: Ashton Maslowski, Simon Johnson, Alex Harrell, Dylan Rudnick.

And we also have the national anthem being sung this morning by John Goettle. He is the son of Brenda and SBAND Member Shane Goettle. Please stand for the colors. (Presentation of the Colors commenced.) (Singing of the National Anthem commenced.)

MS. EINARSON: Beautifully done. Thank you. I would also like to, at this time, introduce the 2018 planning committees. I would just ask that the members stand as I say your name. Our committee members for this year's planning were Zack Pelham, myself, Brenda Blazer, Andrew Askew, and Jeni Albaugh. Thank you very much. We also had committee members in charge of the silent auction. If you weren't there last night, you missed something. It was very fun. So, I would ask that they stand to be recognized: Jill Grossman, Casey Furey, Sarah Wall, and Margi Lee.

So, this is my last official thing to do is this morning's meeting, I guess. Everybody's been asking me how I feel about that, and I'm not really sure.

This year has gone really fast for me. It feels like I've been president forever, and it also feels like I'm just figuring it out. So, the one thing that I

would say, though, is thank you. Probably one of the best days of my life was the day I found out that I was accepted to the UND School of Law.

My next professional days – best professional days have probably been at this meeting. I am just overwhelmed by the warmth and the hospitality that I have received from our members throughout the course of the year. I've been so happy to meet other Bar leaders across the country and across our state. I just – I really love lawyers.

My parents were not college-educated, so for me to go to law school was, kind of – it was, kind of, a surprise almost. When I was ready to go to college, my guidance counselor identified a few career choices for me. And back in the '80s, my career choices were dental hygiene, teaching, and nursing. That was what I was given. Well, having no science aptitude whatsoever, I quickly was kicked off the path of nursing.

So, it seems like I stumbled upon this path accidentally, but I'm so very happy that that happened, and I'm so proud to be a lawyer. I love this job. I love taking care of the people that we serve. I'm in awe and so impressed by all of you lawyers, and I'm so happy to be one of them. It strikes me that we usually want to do the right thing and work very hard to make sure that the right thing happens for other people, too. I've learned important lessons in leadership. I have made important connections; and, hopefully, I have represented you all very well this year. I hope I have.

North Dakota is doing well. I have proudly reported this wherever I've gone. In fact, just two weeks ago, North Dakota hosted the Jackrabbit Bar Conference in Medora. And so, our poor staff is just coming off the planning of that conference and planning this one within a few weeks of each other. For those of you who aren't familiar, the Jackrabbit Bar Conference is a small, informal group that was put together about 50 years ago at a hunting shack in Montana. It's grown over the years to include eight states who are all mandatory Bars and all small in population.

They include Montana, Utah, New Mexico, Nevada, South Dakota, North Dakota, Idaho, and Wyoming. And this conference – I was very proud of our – of North Dakota at this conference and have received nothing but positive feedback from those other attendees. It seems that our North Dakota lawyers are busy, successful, and using their time and talents very well. When we don't serve our clients well, I am happy to report that SBAND has a client protection fund that can help those who are wronged by our misdeeds. And we have had the unfortunate need to deal with that client protection fund this year, but I am glad that it's there. I am expecting that Mr. Weiler will tell you more about some of the things that have happened this year in his report. We are really – I am so happy that we have such a collegial Bar. We have a good relationship with our judiciary and our legislature. We also have a really good

relationship with the law school. And I practice in Grafton, so I'm fairly close to the law school.

My daughter, Sydney, is also a first-year law student this year. And so, I don't know if it was my proximity; my fondness for Dean Rand; or the fact that my daughter was a law student, but I probably know more law students than I have known since I was in law school because I've been there a lot. They've invited me to a lot of things. I have helped judge some competitions; I have spoken to some of their classes. Dean Rand even had me – had myself and Tony Weiler teach one of her leadership classes, so that has been really fun. It is very exciting to see how enthusiastic and excited that these law students are to be members of our career.

I also was so appreciative to see the number of young lawyers at the annual meeting. Over the course of my years on the Board, I think that has been something we have looked to: Attract younger lawyers and make sure our programming and our social functions are appealing to them. The number of young lawyers that I have seen at this convention is just incredible, so I'm glad. I'm hoping they're all feeling welcome and will continue to be involved in SBAND.

I would like to thank the Board for all of their help and support. When I first got on the Board, I was so struck by the intellect in that room. You know, the thoughtful debate that happens, the ability to disagree and still be courteous to one another.

It has been a really good experience serving on the Board. And I am not done – I've still got a year left as Past President – so I plan to hang around and nag people for that year.

I also would like to thank Tony Weiler, who has been kind of like my work husband this year. It seems like he's always taking care of me and making sure that I have what I need and know what to do and where to go. So thank you, Tony. And Carrie and Jeanne and the other SBAND staff: They're just wonderful.

And I would like to, at this point, just take an opportunity to thank them – all of them – thank them for their work for the annual meeting, if you would join me. My kids are not here. They probably don't even know I'm not home. My children are grown. And so, this year was my first year as an empty-nester. And I have to say that it would be difficult to do this with kids at home, I think. My cats are going to be happy that I'm coming home again, so they've probably missed me a little bit. But I would say that I would thank them. I have appreciated that they've been very understanding when I've been gone. Also, my colleagues at Brudvik Law Office: I'd like to thank them. They're probably not here this morning because they were so much fun last night that I think they're either sleeping in or left already. But I merged

my law firm this year with the Brudvik group, and they've been very understanding and supportive of all of my giving out gavels and things that I've been doing other than working with them.

So, it has just been an absolute honor. I don't feel like I'm done. I have a couple projects that I still would like to see happen. And SBAND is, kind of, short-staffed. So, when I have some of these ideas, Tony sometimes looks at me like, "Oh, I don't know if we have the ability to do that." But I'm kind of excited that, maybe, we could do some of these projects with some additional help.

So, I have talked to a few of you about some of these ideas. One is the ABA Legal Services link. I think there's some opportunity to do easier pro bono service and maybe, couple that with some mentoring opportunities, so I'm hoping for that to happen. Also, for some improvement to our lawyer referral service. So, if you have any input about some of those items, I'd love to hear about that. If you would like to be involved with me on any of those kinds of things, I would also welcome that input.

So, that's – I'm always told by Tony to be brief so that's what I'm going to do. He's not doing this yet, though (gestures), so thank you. Now I've got to find my spot here again. Okay. The next item on the agenda is I would call upon Chief Justice Gerald VandeWalle to give an update. Chief?

CHIEF JUSTICE VANDEWALLE: Good morning. Thank you, thank you, thank you. And thank you, Darcie, for your year.

My update's going to be very short. The Court's doing fine with our two new justices. We are struggling with the budget. We're looking at making some changes. Hopefully, they will save money. We'll see what the legislature has to say. And I do want to thank the Bar for its cooperation and support. It's been great over the years. And thank you very much.

MS. EINARSON: Alright. Now, Mr. Weiler, if you would give us the executive director's report.

MR. WEILER: Thank you, Madam President. Whenever someone says "Mr. Weiler," I still look around for my dad. So hopefully, I'll always do that. Thanks, everyone. Boy, what a great annual meeting. Anybody been having fun? Excellent.

We do appreciate the attendance. I think it's been well-attended. We do enjoy putting on what I think is a really good annual meeting. And it is a lot of work. We will take off a couple days, and we'll start planning next year's on Tuesday. So maybe, we'll take a little bit more off than that for the annual meeting, but it's been a good time. We do appreciate the work of my staff, Carrie and Jeanne. I don't know if they're in the room, but – I can't see anything up here – they do a great job. They really appreciate working for you and for us.

Our staff at SBAND, too: We have three other people back at the office. We have two part-time administrative assistants – that works for their scheduling and for ours – and we added one of those this year. We just got to a point where we needed help. We just – we have enough going on. We needed a few more people – or, excuse me. One more person, for sure, to help us with some of our programs; someone to help us in a more dedicated basis to our Lawyer Assistance Program.

But overall, things are great. I do want to start with a “thank you” to you. I appreciate all your work this year. It’s been a lot of fun. My “work wife.” We’ll go with that. That sounds good. But thank you for all your efforts. I know you get one more year with us. I want to thank Charles. Charles – he’s already fishing. But also thank you to the other outgoing members: Kathryn Rand and Jeff Nehring. And also, during the last year, Kim Radermacher was on our board. And she left, and we didn’t get a chance to thank her, but she was a very good member. I really look forward to next year’s act. I’m looking forward to working with you; looking forward to continuing to do the good things that we do at the Bar.

We have 3100 lawyers in North Dakota right now, and that’s about the most we’ve ever had. And if you go back to 2007, we had about 1800. So, in that ten, eleven years, we’ve added over 1000 members. And so, that’s a good thing for the bottom line for SBAND, but it also makes you continue to pay attention to what we do. And what we do is we work for you. We work here to provide you with member benefits so that, even though we are a mandatory Bar, you get the feeling that you get a benefit from being a member of our Bar.

And that’s how we always want to operate, and that’s how we’ll continue to operate for as long as this Board of Governors will have me.

It’s hard to believe that I’ve been standing up here, talking to you for over five years now. It’s hard to believe. It’s gone extremely fast. But June 1st was my five years with the Bar, and I still really enjoy it. I really, really enjoy working with lawyers. One of my greatest fears – and I’ve told you this before – was working for a 15-member board of lawyers. But at the time, it was 14. We added one in there with the split in the north central, northwest. It’s been an actual real pleasure because lawyers want to get stuff done, and the people that volunteer to be on a Board of Governors want to get stuff done. And so, I appreciate greatly working with them. I’m looking forward to Aubrey’s incoming as president. I’ve enjoyed my relationship with her greatly over the last several years, and I know that’s going to continue.

A couple things I’ll just update you on: We’re still in the midst of the Fleck lawsuit. As you know, we were sued in 2015 for a position the board took in 2014. We won, essentially, at the federal district court level. We won

at the Eighth Circuit. They – the plaintiff petitioned for cert to the United States Supreme Court, and the United States Supreme Court asked us to file a brief in response to cert, and we did that. That brief was filed on June 8th. And I'll continue to update you in *The Gavel* on that or via e-mail. And if you ever have questions about it, you can let me know.

What I did find out: One of the illuminating things is that, if you're a former Solicitor General of the United States, you can charge \$1750 an hour. So, you know, "#Goals." I told Doug Bahr that. He's a former Solicitor General of the State of North Dakota. Yours is probably that high, right, Doug?

And the Board of Governors members: Those of you in the room, could you stand, please, if you're here? I do want to thank you guys. You do a lot of work. It really is appreciated and thank you. We don't pay them very well. Every now and then, we buy them dinner, and that's about it. But thank you for that.

So, I'll continue to update you on Fleck. The Bar Association is in extremely good shape financially. We continue to operate on expenses less than revenues, and Aubrey Zuger will tell you about that in a minute.

We will continue to run a tight ship. We'll continue to be stewards of your money. We have the ability, I think, to continue to work hard with that money to do good things for the citizens of North Dakota and for lawyers.

I look forward to our continuing good relationship with the Chief and the court and all of our judges in the state. We have – I think we have a very, very fortunate – we have a fortunate Bar that our Bar gets along so well with our bench, and that our bench is so engaged and involved in what we do. You don't see that all around the country, so we're very fortunate.

I'll leave you with this: We did pay out some money in the Client Protection Fund, and that is money that all of you put in. We maxed out the \$75,000 limits on a certain lawyer. We were able to pay almost 20 of his clients about 77 percent of what he had stolen from them. And we don't ever want to have to use that fund. But it's there should we need it, and we're going to need it again for another lawyer, and we paid out some smaller amounts.

So, the Client Protection Fund is something that all of you pay into, but it's there in case we need it. And also, I do want you to know that our Lawyer Assistance Program is vibrant. It's out there. It's available. If you know someone who's struggling with any kind of an addiction issue or practice management, let me know. Someone can reach out to them. But it is a way for us to help our colleagues; it's a way for us to help make sure that those who are struggling in our profession continue to get better.

So, I'll leave you with this: We work for you. I want you to know that we're available. During the annual meeting, I get a lot of people giving us

suggestions, and I ask them to e-mail me next week. But it's true: We do want to hear from you. So, if you get the survey and there's things you liked and didn't like, let us know. And we know that the truth is somewhere in the middle, because every time I've done an annual meeting, there will be comments that say, "This is the best annual meeting I've ever attended," but there will be another one that says, "It's the worst one I've ever attended." So, we know the truth is somewhere sort of in the middle, we hope. But again, I appreciate being your executive director. I really appreciate the work that all of you do. And if you have questions, comments, concerns, anything, I want you to know that I'm here for you. And I'll always have an open door and/or an open line. So, thank you very much and enjoy the rest of the annual meeting.

MS. EINARSON: Now I will call upon our secretary-treasurer, Aubrey Fiebelkorn-Zuger, to provide the financial report.

MS. FIEBELKORN-ZUGER: Consistent with the past several years, our revenues were up approximately \$50,000 over last year, and our revenues also exceeded expenditures by approximately \$100,000. This resulted in a total net increase of approximately \$100,000 over expenditures, leading to our total net assets of approximately \$2.4 million. As Tony indicated, please feel free to contact us with any questions regarding the financial information.

Detailed financial statements are available on our website. That's all I have, unless anybody has any questions.

MS. EINARSON: Thank you, Aubrey. And Jack McDonald, I will call you for a report from the North Dakota Bar Foundation.

MR. MCDONALD: I'm happy to report that the Bar Foundation is alive and well, as well as the North Dakota Bar Association.

The Bar Foundation report is about in the middle of your packet of information for today's meeting, so I'm not – you can read, you know, all the little details about it in there. Basically, for those of you who are not aware of the Bar Foundation, it's a nonprofit organization that operates on two different levels. The first level is to administer the IOLTA funds. That's the interest off of the attorneys' trust accounts, which doesn't really generate all that much anymore. It used to be a fairly good way to get funds. But lately, it hasn't been. So that's one role. The other role is to provide legal services for the – for the general public. The IOLTA accounts: For 2017, they generated \$33,639, and we have designated that that money will go to the – continue to support legal services to those who cannot afford a lawyer.

In 2015 – you've heard about this before – the Bar Foundation received funds from a settlement with the Justice Department and Bank of America, and that ended up totaling nearly \$1 million. And what we've done with that is that we've distributed those. We put out proposals for grants. We've

received two grant proposals, and we distributed the funds from those – from that settlement to two areas: One, Legal Services of North Dakota was \$908,131; the High Plains Fair Housing, \$109,000. The High Plains Fair Housing was distributed over a period of two years, \$54,800 each year. Legal Services was donated – was contributed over a period of four years: \$227,000 each year, and we get annual reports from each of those entities on how they're doing.

For the IOLTA funds, the IOLTA Committee decided to award \$30,000 of that \$33,000 we received, and that went to Legal Services of North Dakota. And then, in our public service function, we provide programs that encourage the pro bono and the other public service activities by lawyers.

And over the year, we continue to approve funding for the law school in honor of Randy Lee, who always donated some for that. In addition, scholarships were approved for the Law Review Case Comment/Note Award, the homecoming scholarships for the top first-year law students, and a grant to UND for its public interest law program.

As a result of our membership and fundraising efforts last year, our total foundation revenues for 2017 were \$55,000 – \$55,111. They were made – we get those from check-offs from your – some of your dues; we get those from additional donations; and we get most of the money from the silent auction, which you participated in last night. We also administer what's called the Pro Bono Fund. You give money – lawyers give money each year for the Pro Bono Fund to help people receive lawyer services.

We started that in 2010. And to date, at the end of 2017, we've distributed \$156,000, so it's been a – that's been a very good program for us. I'd like to acknowledge the Bar Foundation membership. In addition to myself, Jack Marcil serves as vice chair. The other members are Wally Goulet; Charles DeMakis; Hon. James Hill; Darcie Einarson; Tim Priebe; Kathryn Rand, Dean Rand; Paul Richard; Hon. Lolita Romanick; and the two Thomas brothers, Ben and Bob Thomas. Thank you all very much. I hope you continue to support the Foundation.

MR. PELHAM: Good morning. We have some resolutions that we're going to read. The first resolution is one of appreciation. Whereas, President Darcie Einarson and her family have served the State Bar Association of North Dakota during the past year at a great personal sacrifice to themselves and their family – and her family; And whereas, the State Bar Association of North Dakota has been greatly improved and enriched due to their efforts. Now, therefore, be it resolved that the State Bar Association of North Dakota commend President Einarson and her family for their dedicated efforts.

MS. EINARSON: Resolution number two is also a resolution of appreciation: Whereas, members of the 2018 annual planning committees and

subcommittees and others have put considerable time and efforts into planning and organizing the 2018 Annual Meeting of the State Bar Association of North Dakota; and, whereas, those persons deserve special thanks for their efforts. Now, therefore, be it resolved that the State Bar Association of North Dakota extends a special thank-you to those persons involved in the planning and organizing of the annual meeting, particularly committee members Jennifer Albaugh; Zack Pelham; Darcie Einarson; Brenda Blazer; Andrew Askew; Jill Grossman; Casey Furey; Sarah Wall; and Margi Lee.

Resolution three: Whereas, the businesses and organizations that graciously sponsored portions of the 2018 annual meeting, and those that participated as sponsors and exhibitors are our platinum sponsors: The Vogel Law Firm; SBAND Lawyers Assistance Program; the North Dakota CLE Commission. Gold sponsors were First International Bank; LawPay; Maring Williams Law Office; Pearce Durick PLLC; Serkland Law Firm; and Starion Bank. Silver sponsors: ALPS; Bakke, Grinolds, Wiederholt; Bismarck-Mandan Convention and Visitors Bureau; Crowley Fleck PPLP; Eide Bailly PLLP; Fredrikson and Byron, PA; Meagher and Geer PLLP; North Dakota Guaranty and Title Company; Smith, Porsborg, Schweigert, Armstrong, Moldenhauer and Smith; Zuger, Kirmis and Smith. Our bronze sponsors: The Big Muddy Bar Association; Brudvik Law Office; Casemaker; NRG Technology Services; Pifer's Auction and Realty; SBAND Women Lawyers Section; and the Wheeler Wolf Law Firm. We also have partners: ABA Members Retirement; Clearwater Communications; Image Printing; North Dakota Process Serving, LLC; and the UND School of Law. Whereas, without their participation and financial support, the 2018 Annual Meeting of the State Bar Association of North Dakota would not have been the success that it was. Be it further resolved that the above be thanked for their gracious support.

We also have memorials. We've had a number of lawyers who have left the service of our practice this year, and they're going to be on the screen. We have Orlin W. Backes; E. Thomas Conmy; Terry W. Elhard; Glen G. Gense; the Honorable Gerald G. Glaser; Clifford C. Grosz; John C. Haugland; Trent C. Heinemeyer; Shirley Lawonn Jahnke; William E. Kretschmar; Robert L. McConn; Carl R. McKay, Sr.; Scott M. Nelson; Thomas W. Nielsen; Terence J. Paulson; John Romanick; James M. Stannard; David A. Vaaler; and Paul G. Woutat.

And next on our agenda is the election of our ABA Young Lawyer Delegate. We have three members up for election for this position. This member will serve as the delegate to the ABA on behalf of North Dakota, and I will just read a bit about them. I'm not sure if this is going to show up or not. Our three candidates are Andrew Askew, Jarrod Steele, and Kesha Tanabe. Andrew Askew is an associate at the Pearce Durick Law Firm in Bismarck.

Andy focuses his practice on civil and commercial litigation, real estate law, and general business representations. He also maintains a legislative lobbying and governmental relations practice. Andy is currently serving as North Dakota's young lawyer delegate to the ABA House of Delegates.

MR. WEILER: He's here.

MS. EINARSON: And is he here? If you would – would you stand, please, Andy? Okay. I'm so glad that we had so much interest amongst this position. And Jarrod (J.R.) Steele. If Jarrod's here, he is the Walsh County Assistant State's Attorney. He is a graduate of the University of North Dakota School of Law, where he was active in many student organizations and often an officer. Prior to law school, he obtained a Master of Arts degree in legal studies and a Bachelor of Science degree in biology from the University of Illinois. J.R., are you here? If you would stand, please.

MR. WEILER: Not here.

MS. EINARSON: Not here? And Kesha Tanabe has been licensed to practice law in North Dakota and a member of SBAND since 2016.

She is originally from Grand Forks, North Dakota. Kesha – maybe it's "Kesha" – is a graduate of the University of St. Thomas, the London School of Economics, and the Yeshiva University/Cardozo School of Law. She is currently a solo practitioner. Prior to starting her own law firm, she was an Assistant Attorney General in New York and a partner at Maslon LLP and Faegre Baker Daniels LLP in Minneapolis. She serves clients from North Dakota, Minnesota, and the greater Midwest. Her law firm is focused on serving the needs of businesses, investors, and financial institutions. She's a member of the ABI Civil Litigation and the Minnesota State Bar Association Bankruptcy Pro Bono Committee. In the past, she's been an active member of the ABA Business Law Section, and she co-authored an ABA publication through the Trust Indentures and Indenture Trustee Committee. So, we need to have a vote of our membership for this position. And I can't see.

MR. WEILER: I will.

MS. EINARSON: – going to have to have someone – okay – count the vote. So, I will – we will just go by a show of hands. So first, all in favor of Andy Askew for the position, signify by raising your hand.

MR. WEILER: Got it.

MS. EINARSON: Okay. Next, in favor of Jarrod (J.R.) Steele, please raise your hands.

MR. WEILER: Got it.

MS. EINARSON: Okay. Kesha Tanabe, please raise your hands.

MR. WEILER: Got it.

MS. EINARSON: Okay.

MR. WEILER: Andy won.

MS. EINARSON: Okay. Well, congratulations, Mr. Askew. You are our young lawyer delegate. We also have a young lawyer representative on our board, and that is also Mr. Askew, so we'll look forward to his updates again. So, the next thing is that we have election of the ABA delegate, and we have just one nomination. That is for Dan – or, I guess I would ask for nominations from the floor.

MR. HURLY: I move to appoint Dan the ABA delegate for the State Bar Association of North Dakota. I've known him for nearly twenty years. He's very active in the Lake Region area. I'm a little biased. I've practiced law with him for ten years. But he is very active in whatever he does. He's a go-getter, and he would be a great representative for the State Bar Association of North Dakota.

MR. HILL: Second.

MS. EINARSON: Thank you. And there's a second. And we can't accept nominations from the floor, so my understanding is that I can call for the question. All in favor of Mr. Traynor as our ABA delegate, please signify by saying "aye." Any opposed? Motion carries. Congratulations, Dan.

Next, we have election of president-elect. Aubrey Fiebelkorn-Zuger has submitted a petition. Are there any nominations for Ms. Zuger?

MS. CONROY: President Einarson, my name is Lori Conroy. I nominate Ms. Zuger for president-elect.

MS. EINARSON: Is there a second?

MR. HILL: Second.

MS. EINARSON: And there's a second. All in favor, signify by saying "aye." Any opposed? Motion carries. Congratulations, Aubrey. Well, this does conclude the business of our meeting, so I will adjourn. And I'm happy to turn this gavel over to Zack Pelham.

MR. PELHAM: Thanks, Darcie. We're adjourned. Thank you. We'll see you next year in Fargo. Oh, we have a – well, not quite yet. Don't leave yet, but we have more programming at – beginning at 9:15 a.m. The Vogel lecture at 9:15 a.m. Thank you again to the Vogel Law Firm for sponsoring that. Thank you.

(Whereupon, the meeting concluded at 8:44 a.m.)

REPORTER'S CERTIFICATE

I, Elizabeth H. Lundquist, a general shorthand reporter, 51 Broadway, Suite 130, Fargo, North Dakota, do hereby certify that the foregoing thirty-two (32) pages of typewritten material constitute a full, true, and correct transcript of my original stenotype notes, as they purport to contain, of the annual meeting reported by me at the time and place hereinbefore mentioned.