

Exhibit - 19

Court of Appeals of Michigan.


**Martha PAAVOLA, Guardian of the Estate of Karen
Rae Paavola, a mentally incompetent person, Plaintiff-
Appellant,
v.
SAINT JOSEPH HOSPITAL CORPORATION,
Defendant-Appellee.**

Docket No. 60405.
Submitted June 29, 1982.
Decided Aug. 25, 1982.
Released for Publication Nov. 9, 1982.

Guardian of estate of mentally incompetent person appealed order of the Genesee Circuit Court, Harry B. McAra, J., granting accelerated judgment for defendant in negligence action. The Court of Appeals, Walsh, J., held that period of limitation did not begin to run against insane person upon appointment of guardian, and thus, filing of negligence complaint on behalf of mentally incompetent daughter was timely although brought approximately 20 months after appointment of guardian.


Reversed.

West Headnotes

[1]  [KeyCite Citing References for this Headnote](#)

... [241](#) Limitation of Actions
 ... [241II](#) Computation of Period of Limitation
 ... [241II\(C\)](#) Personal Disabilities and Privileges
 ... [241k74](#) Insanity or Other Incompetency
 ... [241k74\(2\)](#) k. Removal of Disability. [Most Cited Cases](#)

Appointment of a guardian for insane person does not constitute removal of insane person's disability for purposes of saving provision for statute of limitations. [M.C.L.A. § 600.5851\(1, 2\)](#).

[2]  [KeyCite Citing References for this Headnote](#)

... [241](#) Limitation of Actions
 ... [241II](#) Computation of Period of Limitation
 ... [241II\(C\)](#) Personal Disabilities and Privileges
 ... [241k74](#) Insanity or Other Incompetency
 ... [241k74\(2\)](#) k. Removal of Disability. [Most Cited Cases](#)

Period of limitations did not begin to run against insane person upon appointment of guardian, and thus, filing of guardian's complaint on behalf of her mentally incompetent daughter alleging negligence was timely although brought approximately 20 months after appointment of guardian. M.C.L.A. § 600.5851(1, 2).

****609 *10** Sommers, Schwartz, Silver & Schwartz, P.C. by ***11** Stanley S. Schwartz, Norman D. Tucker and Richard D. Fox, Southfield, for plaintiff-appellant.

Neal & Lengauer by Stephen Zahs, Flint, for defendant-appellee.

Before R.B. BURNS, P.J., and WALSH and MARUTIAK,^{FN*} JJ.

FN* Peter J. Marutiak, 35th Judicial Circuit Judge, sitting on Court of Appeals by assignment pursuant to Const. 1963, Art. 6, Sec. 23, as amended 1968.

WALSH, Judge.

Plaintiff, Martha Paavola, guardian of the estate of Karen Rae Paavola, a mentally incompetent person, appeals entry of accelerated judgment for defendant Saint Joseph ****610** Hospital Corporation. The trial court ruled that plaintiff's suit was barred by the statute of limitations. GCR 1963, 116.1(5).

Plaintiff's daughter and ward, Karen Rae Paavola, was given medical treatment at defendant hospital in 1973. During a September 15, 1973, operation, plaintiff's daughter went into cardiac arrest, was deprived of oxygen for a matter of minutes, and apparently suffered permanent brain damage which rendered her mentally incompetent.

Plaintiff was appointed her daughter's guardian on June 19, 1979. In that capacity she filed suit against defendant hospital on February 25, 1981, alleging that her daughter's mental incompetence was caused in 1973 by defendant's negligence. Defendant filed a motion for accelerated judgment on the ground that the suit was barred by the running of the period of limitation. The trial court agreed, ruling that suit could have been brought by plaintiff only within one year of her appointment as guardian of her daughter. Because suit was brought approximately 20 months after the ***12** appointment, accelerated judgment was entered for defendant. We reverse.

At issue is interpretation of the following statutory saving provision:

"If the person first entitled to make an entry or bring an action is under 18 years of age, insane or imprisoned at the time his claim accrues, he or those claiming under him shall have one year after his disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run * * *." M.C.L. § 600.5851(1); M.S.A. § 27A.5851(1). ^{FN1}

FN1. The statute further provides: "The term insane as employed in this chapter means a condition of mental derangement such as to prevent the sufferer from comprehending rights he is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane."

M.C.L. § 600.5851(2); M.S.A. § 27A.5851(2).

That Karen Rae Paavola is insane for purposes of this statute is not disputed.

The question presented is whether Karen Rae Paavola's disability was removed by the appointment of her mother as her guardian. The trial court ruled that it was and that the one year statutory grace period began to run at the time of that appointment. We disagree.

In Keating v. Michigan Central R. Co., 94 Mich. 219, 53 N.W. 1053 (1892), the Supreme Court held that, for purposes of the statutory saving provision, the disability of a minor is not removed until he or she attains the age of majority. The Court rejected the defendant's claim that the term "disability" means disability to bring suit, and ruled that the appointment of a guardian for a minor does not start the running of the period of limitation against the minor. This ruling was reaffirmed in Klosky v. Dick, 359 Mich. 615, 103 N.W.2d 618 (1960). Cf. Smith v. Bordelove, 63 Mich.App. 384, 234 N.W.2d 535 (1975), *lv. den.* 395 Mich. 772 (1975).

*13 Defendant argues that the disabilities of infancy and insanity should be treated differently for purposes of resolution of the issue presented in this case. The statute, however, makes no pertinent distinction between these two disabilities and we are not persuaded that such distinction is warranted. See Whalen v. Certain-Teed Products Corp., 108 Ga.App. 686, 134 S.E.2d 528 (1963).



In jurisdictions where this issue has been addressed, it has generally been held that, absent contrary statutory authority, the appointment of a guardian for a mentally incompetent person does not have the effect of starting the running of a period of limitation tolled by virtue of the disability of mental incompetence. Emerson v. Southern R. Co., 404 So.2d 576 (Ala.1981), Zini v. First National Bank in Little Rock, 228 Ark. 325, 307 S.W.2d 874 (1957), Shambegian v. United States, 14 F.Supp. 93 (D.R.I., 1936), Johnson v. United States, 87 F.2d 940, 942 (CA 8, 1937) (" * * * it has been generally held under such statutes that the insane person may maintain an action by his guardian at any time during the continuance of his disability"), Wolf v. United States, 10 F.Supp. 899, 900 (S.D.N.Y., 1935):

**611 "Where there is a statute to the effect that a suit on a cause of action accruing to an infant or insane person may be brought within a specified time after removal of the disability, it is generally held that the appointment of a guardian or committee is not a removal of the disability in the sense that it starts the running of the time limitation. The saving clause is held to cover the time of continuance of infancy or insanity. Funk v. Wingert, 134 Md. 523, 107 A. 345, 6 A.L.R. 1986; Monroe v. Simmons, 86 Ga. 344, 12 S.E. 643; Hervey v. Rawson, 164 Mass. 501, 41 N.E. 682; Keating v. Michigan Central R. Co., 94 Mich. 219, 53 N.W. 1053; Finney v. Speed, 71 Miss. 32, 14 So. 465; *14 Bourne v. Hall, 10 R.I. 139. The view is taken that the Legislature had in mind, not merely the inability to sue, but also the difficulties of the incompetent in giving information and in testifying. Funk v. Wingert, supra."

See Anno: Appointment of Guardian for Incompetent or for Infant as Affecting Running of Statute of Limitations Against Ward, 86 ALR2d 965. ^{FN2}

FN2. Emery v. Chesapeake & O.R. Co., 372 Mich. 663, 127 N.W.2d 826 (1964), and Geisland v. Csutoras, 78 Mich.App. 624, 261 N.W.2d 537 (1977), involved suits brought by guardians on behalf of mentally incompetent plaintiffs. In discussing whether the period of limitation had run against the plaintiffs, the appellate courts focused solely on the issue of the mental condition of the plaintiffs. While the issue of the effect of the appointment of guardians was not presented, it is clear that the appointments played no

part in the courts' resolution of the statute of limitations questions.

[1]  [2]  Nothing in Michigan's statute suggests legislative intent that an insane person's exemption from the running of periods of limitation is to end upon appointment of a guardian for him or her. We adopt the view generally held in other jurisdictions and hold that the appointment of a guardian for an insane person does not constitute removal of the insane person's disability for purposes of M.C.L. § 600.5851(1). Periods of limitations, therefore, do not begin to run against insane persons upon such appointment. The filing of plaintiff's complaint on behalf of her mentally incompetent daughter was, therefore, timely.

Defendant urges that our holding effects the "impalatable result" that the guardian of a mentally incompetent person may bring suit on the ward's behalf during the entire period of mental incompetency-a period potentially many decades long. In our judgment, however, a contrary holding would constitute unjustifiable tampering with the significant public policy clearly reflected in M.C.L. § *15 600.5851(1) the protection and preservation of the substantive rights of mentally incompetent persons.

Reversed. Costs to plaintiff.

Mich.App., 1982.
Paavola v. Saint Joseph Hosp. Corp.
119 Mich.App. 10, 325 N.W.2d 609

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Exhibit - 20

Court of Appeals of Michigan.

**Farmer ASHER and Lucy Marie Asher, his wife,
Plaintiffs-Appellants,
v.
EXXON COMPANY, U.S.A., a Division of Exxon
Corporation, a Foreign Corporation, Defendant-
Appellee,
and
Product-Sol, Inc., a Michigan Corporation, U.S.
Industrial Lubricants, Inc., a Foreign Corporation,
Chemical Solvents Inc., a Foreign Corporation, 3M
Company, a Foreign Corporation, Techno Adhesives
Company, a Foreign Corporation, and Dubois
Chemicals, Inc., Jointly and Severally, Defendants.**

Docket No. 140366.
Submitted March 10, 1993, at Detroit.
Decided July 19, 1993, at 9:25 a.m.
Released for Publication Sept. 23, 1993.

Employee who was allegedly injured as result of his exposure to toxic chemical manufactured by defendant sued to recover on products liability theory, and the Circuit Court, Wayne County, John H. Gillis, Jr., J., granted manufacturer's motion for summary disposition on statute of limitations grounds. Employee appealed. The Court of Appeals, Holbrook, J., held that: (1) continuing-wrongful-acts doctrine did not toll period of limitations on employee's products liability action until date of employee's most recent exposure to chemical manufactured by defendant, and (2) employee failed to establish that he was suffering from any "mental derangement" such as would prevent limitations from running.

Affirmed.

West Headnotes

[1]  [KeyCite Citing References for this Headnote](#)

- ✓ [241](#) Limitation of Actions
 - [241II](#) Computation of Period of Limitation
 - [241II\(A\)](#) Accrual of Right of Action or Defense

↳ [241k55 Torts](#)

↳ [241k55\(4\) k. Injuries to Person. Most Cited Cases](#)

Cause of action for damages arising out of tortious injury to person accrues, for limitations purposes, when all of the elements of cause of action have occurred and can be alleged in proper complaint.

[2]  [KeyCite Citing References for this Headnote](#)

↳ [241 Limitation of Actions](#)

↳ [241II Computation of Period of Limitation](#)

↳ [241II\(F\) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action](#)

↳ [241k95 Ignorance of Cause of Action](#)

↳ [241k95\(4\) Injuries to the Person](#)

↳ [241k95\(4.1\) k. In General. Most Cited Cases](#)

Products liability cause of action accrues when plaintiff knows or should have known of injury, and not at time of exposure to product or at time of diagnosable injury.

[3]  [KeyCite Citing References for this Headnote](#)

↳ [241 Limitation of Actions](#)

↳ [241II Computation of Period of Limitation](#)

↳ [241II\(A\) Accrual of Right of Action or Defense](#)

↳ [241k55 Torts](#)

↳ [241k55\(6\) k. Continuing Injury in General. Most Cited Cases](#)

Continuing-wrongful-acts doctrine did not toll statute of limitations on products liability action arising out of employee's exposure to toxic chemicals in workplace until employee's most recent exposure to product manufactured by defendant, given employee's admission, at time he first developed symptoms of illness, that he believed his symptoms were caused by chemicals he used at work.

[4]  [KeyCite Citing References for this Headnote](#)

↳ [241 Limitation of Actions](#)


↳ [241II Computation of Period of Limitation](#)

↳ [241II\(C\) Personal Disabilities and Privileges](#)

↳ [241k74 Insanity or Other Incompetency](#)

↳ [241k74\(1\) k. In General. Most Cited Cases](#)

Employee who allegedly experienced some memory loss and difficulty in finding his way around employer's plant as result of his exposure to chemical manufactured by defendant failed to establish that he was suffering from "mental derangement" such as would toll statute of limitations on his products liability action. [M.C.L.A. § 600.5851](#).

[5]  [KeyCite Citing References for this Headnote](#)

↳ [241 Limitation of Actions](#)

↳ [241II Computation of Period of Limitation](#)

↳ [241II\(C\) Personal Disabilities and Privileges](#)

↳ [241k74 Insanity or Other Incompetency](#)

↳ [241k74\(1\) k. In General. Most Cited Cases](#)

Mere fact that employee was able to work was not dispositive of whether he was suffering from any "mental derangement" such as would toll statute of limitations on his products liability action against chemical manufacturer. M.C.L.A. § 600.5851.

***636 **728 Mark Granzotto**, Detroit and Jerome G. Quinn, Bloomfield Hills, for plaintiffs-appellants.

Dykema Gossett by Joseph C. Basta, Kathleen McCree Lewis, and Darleen Darnall, Detroit, for defendant-appellee.

****729 Before GRIBBS, P.J., and HOLBROOK, and NEFF, JJ.**

***637 HOLBROOK, Judge.**

In this products liability case, the circuit court granted defendant Exxon Company, U.S.A., summary disposition under MCR 2.116(C)(7). Plaintiffs appeal as of right. We affirm.

Farmer Asher (plaintiff) worked for General Motors Corporation from February 10, 1966, to May 15, 1987. Plaintiff's work involved cleaning glue residue from the walls and floors of spray booths. During the course of plaintiff's employment at General Motors, he was exposed to various industrial adhesives and cleaning solvents manufactured and sold by Exxon Company, U.S.A. (defendant) and other defendants. Plaintiff used one of these products, "Fab cleaner," throughout his tenure at General Motors. Defendant's product, 587 Naphtha, was first sold to General Motors in July of 1985 for use as a component of Fab cleaner.

Plaintiff initially avoided going to a doctor because he did not want to be placed on sick leave and suffer reduced income. Dr. Jerry Walker first treated plaintiff in December of 1979 for chronic rhinitis, anxiety, boils, and breathing difficulty. Walker diagnosed that these conditions were caused by plaintiff's exposure to chemicals at his workplace.

During the 1980s, plaintiff began to experience memory loss, difficulty finding his way around the General Motors plant, and chronic lethargy. Plaintiff failed to heed Walker's advice to find a different job. In May of 1987, Walker declared plaintiff permanently disabled. Plaintiff and his wife filed their complaint on April 18, 1989.

Defendant moved for summary disposition under MCR 2.116(C)(7), arguing that plaintiffs' complaint was not filed within the period of limitation. The other defendants joined in defendant's motion. After plaintiffs had settled with all six other defendants, ***638** the circuit court heard oral arguments regarding the motion. Defendant argued that plaintiff knew of his claim for several years by the time he began using Fab cleaner containing 587 Naphtha in July of 1985 because he knew from the onset of his first symptoms that the chemicals were a possible cause of his illness. Defendant argued that plaintiff had three years from the date of his first exposure to its product in July of 1985 to file timely his cause of action. Plaintiff responded that the complaint was filed timely because he was continuously subjected to defendant's tortious conduct through plaintiff's last day of employment with General Motors on May 15, 1987. Alternatively, plaintiff argued that the period of limitation had been tolled because he had been

suffering from mental derangement. The circuit court found that plaintiff was not mentally deranged because he was able to work and function. The circuit court then granted defendant summary disposition.

When reviewing a motion for summary disposition under MCR 2.116(C)(7), this Court accepts all well-pleaded allegations as true and construes them most favorably to the plaintiff. Bonner v. Chicago Title Ins. Co., 194 Mich.App. 462, 469, 487 N.W.2d 807 (1992). If the pleadings show that a party is entitled to judgment as a matter of law, or if affidavits or other documentary evidence show that there is no genuine issue of material fact, the trial court must render judgment without delay. MCR 2.116(I)(1); Nationwide Mutual Ins. Co. v. Quality Builders, Inc., 192 Mich.App. 643, 648, 482 N.W.2d 474 (1992). If no facts are in dispute, the court must decide as a matter of law whether the claim is statutorily barred. Harris v. Allen Park, 193 Mich.App. 103, 106, 483 N.W.2d 434 (1992).

It is undisputed that the period of limitation for ***639** a products liability action is three years. M.C.L. § 600.5805(9); M.S.A. § 27A.5805(9). The issue ^{FN1} presented in ****730** this case is whether the continuing-wrongful-acts doctrine tolls the period of limitation in a products liability action until the time of the most recent exposure to the product.

FN1. In Scott v. Monroe Co. Bd. of Road Comm'rs, unpublished opinion per curiam of the Court of Appeals, decided November 8, 1989 (Docket Nos. 108566, 108567), lv. vacated 438 Mich. 869, 474 N.W.2d 592 (1991), this Court rejected the argument that the products liability statute of limitations began to run on the date of the plaintiff's last exposure to toxic substances in the workplace.

M.C.L. § 600.5827; M.S.A. § 27A.5827 provides:

Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues....

[T]he claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.

[1] ^{****} A cause of action for damages arising out of tortious injury to a person accrues when all the elements of the cause of action have occurred and can be alleged in a proper complaint. Connelly v. Paul Ruddy's Equipment Repair & Service Co., 388 Mich. 146, 150, 200 N.W.2d 70 (1972). Under the discovery rule, an action for products liability accrues when the plaintiff discovers or should have discovered a possible cause of action. Bonney v. Upjohn Co., 129 Mich.App. 18, 35, 342 N.W.2d 551 (1983).

In Defnet v. Detroit, 327 Mich. 254, 258, 41 N.W.2d 539 (1950), our Supreme Court held that continuing wrongful acts occurring within the period of limitation prevent the accrual of an action in trespass. Since then, the continuing-wrongful-acts doctrine has been applied to other claims. See, e.g., Moore v. Pontiac, 143 Mich.App. 610, 614, 372 N.W.2d 627 (1985) (nuisance); ***640** Sumner v. Goodyear Tire & Rubber Co., 427 Mich. 505, 510, 398 N.W.2d 368 (1986) (civil rights). Plaintiffs argue that the continuing-wrongful-acts doctrine should apply to products liability actions for personal injury damages.

[2] ^{****} [3] ^{****} In Larson v. Johns-Manville Sales Corp., 427 Mich. 301, 304-305, 399 N.W.2d 1 (1986), our Supreme Court held in part that a cause of action for asbestosis accrues in accordance with the

discovery rule rather than at the time of the exposure to asbestos or at the time of diagnosable injury. A products liability cause of action accrues at the time a person knows or should have known of the injury and not at the time of exposure to the product or at the time of diagnosable injury. Stinnett v. Tool Chemical Co., Inc., 161 Mich.App. 467, 472-473, 411 N.W.2d 740 (1987), citing Larson. The Court in Stinnett, supra at 473, 411 N.W.2d 740, further held that the plaintiff's claim was barred by the statute of limitations because he failed to file his complaint within three years after he knew or should have known of the injury. Consequently, a cause of action for products liability accrues when the plaintiff discovers, or through the exercise of reasonable diligence should discover, an injury and its likely cause. Mascarenas v. Union Carbide Corp., 196 Mich.App. 240, 244, 492 N.W.2d 512 (1992), citing Moll v. Abbott Laboratories, 192 Mich.App. 724, 731, 482 N.W.2d 197 (1992). Accordingly, we conclude that the accrual of a products liability action is determined by reference to the discovery rule. Thus, the continuing-wrongful-acts-doctrine does not toll the period of limitation in a products liability action until the most recent exposure to the product. Rather, the period of limitation in a products liability case begins to run when the plaintiff discovers, or through the exercise of reasonable *641 diligence should discover, an injury and its likely cause. At that time, all the elements of the cause of action have occurred and can be alleged in a proper complaint. Connelly, supra.

In this case, plaintiff admitted that at the time he first developed symptoms of illness in the late 1970s, he believed that his symptoms were caused by the chemicals he used at work. Plaintiff's first exposure to defendant's product occurred in July of 1985. Like in Stinnett, supra, and Mascarenas, supra at 246, 492 N.W.2d 512, the circuit court in this case could have relied on plaintiff's own statements to find his cause of action barred. We agree with defendant that plaintiff had three years from July of 1985 to file a claim. Because plaintiffs' complaint was filed after July of 1988, it was barred by the statute of limitations.

****731** [4] [5] We reject plaintiff's argument that the period of limitation had been tolled under M.C.L. § 600.5851; M.S.A. § 27A.5851 because he had been suffering from mental derangement. None of the documentary evidence submitted by plaintiffs to the circuit court show any controversy with respect to whether plaintiff was deranged at the time his claim accrued. Makarow v. Volkswagen of America, Inc., 157 Mich.App. 401, 407, 403 N.W.2d 563 (1987). Although the circuit court erred in finding that plaintiff was not mentally deranged because he was able to work, see Davidson v. Baker-Vander Veen Construction Co., 35 Mich.App. 293, 302-303, 192 N.W.2d 312 (1971), the evidence presents no genuine issue of material fact regarding plaintiff's sanity at the time his claim accrued. See also Hooper v. Hill Lewis, 191 Mich.App. 312, 316, 477 N.W.2d 114 (1991). Thus, the circuit court did not err in granting defendant summary disposition.

Affirmed.

Mich.App., 1993.
Asher v. Exxon Co., U.S.A.
200 Mich.App. 635, 504 N.W.2d 728, Prod.Liab.Rep. (CCH) P 13,710

END OF DOCUMENT

Exhibit - 21

M.C.L.A. 600.5855

Michigan Compiled Laws Annotated Currentness

Chapter 600. Revised Judicature Act of 1961 (Refs & Annos)

↳ Revised Judicature Act of 1961 (Refs & Annos)

↳ Chapter 58. Limitation of Actions (Refs & Annos)

➔ **600.5855. Fraudulent concealment of claim or identity of person liable, discovery**

Sec. 5855. If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

Exhibit - 22

United States District Court,
E.D. Michigan,
Southern Division.

Michael D. McCRAY, Plaintiff,
v.
Marc MOORE, et al., Defendants.

No. 07-13297.
Sept. 9, 2008.

Michael McCray, Kincheloe, MI, pro se.

Steven M. Cabadas, MI Dept of Attorney General, Lansing, MI, George M. Degrood, III, Thomas, Degrood, Southfield, MI, for Defendants.

ORDER ACCEPTING REPORT AND RECOMMENDATION

DENISE PAGE HOOD, District Judge.

I. INTRODUCTION

*1 This matter is before the Court on Magistrate Michael Hluchaniuk's Report and Recommendation [**Docket No. 49, filed August 6, 2008**] recommending that Defendant's Motions for Judgment on the Pleadings [**Docket No. 19, filed September 28, 2008**] and Summary Judgment [**Docket No. 23, filed October 26, 2008**] be granted, and Plaintiff's Motion to Voluntarily Dismiss Certain Defendants [**Docket No. 29, filed March 20, 2008**] be denied as moot, and that this matter be dismissed in its entirety with prejudice. Plaintiff filed an objection to the Report and Recommendation [**Docket. No. 52, filed August 18, 2008**], to which Defendants filed a Response [**Docket No. 53, filed August 21, 2008**].

The only objection raised to the Magistrate Judge's Report and Recommendation is that Plaintiff alleges that the applicable statute of limitations should have been tolled due to fraudulent concealment of his cause of action by the Defendants. This Court has reviewed the remainder of the Magistrate Judge's Report and Recommendation, and ACCEPTS and ADOPTS all portions not relating to the issue of tolling the statute of limitations, and will discuss Plaintiff's objections below.

II. STANDARD OF REVIEW

The standard of review to be employed by the Court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." *Id.*

III. ANALYSIS

Plaintiff asserts that the Magistrate Judge committed error by failing to find that the applicable statute of limitations should be **tolled** because of the alleged fraudulent **concealment** of his cause of action by the Defendants. To successfully advance a claim of fraudulent **concealment** as a basis for avoiding the limitations bar, Plaintiff must demonstrate that:

- 1) defendants wrongfully **concealed** the existence of the cause of action;
- 2) plaintiff failed to discover operative **facts**, within the **limitation period**, that are the basis of the cause of action; and
- 3) plaintiff exercised due diligence to discover those **facts**.

Hill v. United States Dept. Of Labor, 65 F.3d 1331, 1335 (6th Cir.1995).

Plaintiff has not produced new evidence substantiating his contention, nor does he satisfy the three elements needed to advance a theory of fraudulent concealment. Nowhere within his objections does Plaintiff explain how or when he actually discovered his claim, nor what new operative facts or information were obtained after the limitation period expired. In fact, as the Magistrate Judge notes on page 22 of his Report and Recommendation, the information that Plaintiff contends was concealed from him was used by him and his lawyer in reaching the plea agreement for his underlying criminal proceedings on June 11, 2003. Plaintiff has failed to show that he has exercised due diligence in discovering the facts.

IV. CONCLUSION

***2** The Court fully adopts Magistrate Judge Michael Hluchaniuk's Report and Recommendation.

Accordingly,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge Michael Hluchaniuk [**Docket No. 49, filed August 6, 2008**] is ACCEPTED and ADOPTED as this Court's finding and conclusions of law.

IT IS FURTHER ORDERED that Defendant's Motion for Judgment on the Pleadings [**Docket No. 19, filed September 28, 2008**] is GRANTED

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment [**Docket No. 23, filed October 26, 2008**] is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Voluntarily Dismiss Certain Defendants [Docket No. 29, filed March 20, 2008] is MOOT.

IT IS FURTHER ORDERED that this case is DISMISSED with prejudice.

REPORT AND RECOMMENDATION ON DEFENDANTS' MOTION FOR JUDGMENT ON PLEADINGS, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL

MICHAEL HLUCHANIUK, United States Magistrate Judge.

I. PROCEDURAL HISTORY

Plaintiff, Michael McCray is a prisoner in the custody of the State of Michigan. (Dkt.1). Pursuant to 42 U.S.C. § 1983 plaintiff filed a complaint against defendants on August 8, 2007, alleging that they violated his constitutional rights. *Id.* Plaintiff sought to proceed under the provisions of 28 U.S.C. § 1915(a), which allows a party to file a complaint without payment of customary court fees. (Dkt.2). On August 8, 2007, plaintiff's application to proceed *in forma pauperis* was granted. (Dkt.5). District Judge Denise Page Hood referred this matter to Magistrate Judge Mona K. Majzoub for all pre-trial matters on August 21, 2007. (Dkt.7). On January 14, 2008, this matter was reassigned to the undersigned. (Dkt.26).

Defendant Moore (a Michigan State Trooper) filed an answer to the complaint on September 17, 2007. (Dkt.12). Defendants Birdwell, Adams, and the City of Adrian (Adrian defendants) filed a motion for judgment on the pleadings on September 28, 2007. (Dkt.18). The remaining defendants ^{FN1} filed an answer on September 25, 2007 and a motion for summary judgment on October 26, 2007. (Dkt.16,23). Plaintiff moved for additional time to respond to the motion for judgment on the pleadings, which was denied by Magistrate Judge Majzoub on November 7, 2007. (Dkt.21, 25). Instead of responding to the motion for judgment on the pleadings or the motion for summary judgment, plaintiff filed a motion to amend the complaint and a motion to "voluntarily" dismiss certain defendants. (Dkt.29, 30). Plaintiff did not file a response to the motion for judgment on the pleadings so, on April 16, 2008, the Court directed plaintiff to file a response by May 12, 2008. (Dkt.43). Plaintiff has not filed a response. The Court also directed plaintiff to respond to the motion for summary judgment by March 28, 2008. (Dkt.27). Plaintiff has not responded to this motion either.

^{FN1}. These defendants are Magistrate Tina Todd, Circuit Court Judge William Lavoy, an unidentified "District Judge," the County of Monroe, the County of Lenawee, the Monroe County Prosecutor's Office, prosecuting attorney Weipert, prosecuting attorney Swinkey (County defendants), the Monroe County Sheriff's Department, Detective Corie, Deputy Gore, and Chief Tilman Crutchfield (Sheriff's Department defendants). In his motion to voluntarily dismiss certain defendants, plaintiff expresses his willingness to dismiss all of the County defendants, but not the Sheriff's Department defendants. (Dkt.29).

On March 25, 2008, the Court directed defendants to respond to plaintiff's motions. (Dkt.32). The Adrian defendants filed responses on April 8, 2008. (Dkt.40, 41). Defendant Moore filed a response to the motion to amend on April 9, 2008. (Dkt.42). The County defendants and the Sheriff's Department

defendants filed a response to the motion to amend on May 6, 2008. (Dkt.44). Plaintiff filed replies on May 12, 2008. (Dkt.46, 47). Plaintiff also filed an affidavit on May 27, 2008. (Dkt.48).

*3 For the reasons for forth below, the undersigned **RECOMMENDS** that defendants' motions for judgment on the pleadings and for summary judgment be **GRANTED**,^{FN2} that plaintiff's motion to voluntarily dismiss certain defendants be **DENIED** as **MOOT**, and that plaintiff's complaint be **DISMISSED** in their entirety **WITH PREJUDICE**.

FN2. While defendant Moore has not filed a dispositive motion, plaintiff's claims against him should be dismissed with prejudice for the same reasons as the remaining defendants and as he describes in his response to plaintiff's motion for leave to amend the complaint, discussed herein.

II. STATEMENT OF FACTS

A. Plaintiff's Complaint and Proposed Amended Complaint

Plaintiff's claims arise from an incident that occurred on April 10, 2003. (Dkt.1, p. 3). Plaintiff alleges that he was pulled over on M-50 in Dundee, Michigan while "out on a bond stipulation." *Id.* Plaintiff claims that he was not permitted to leave Lenawee County unless his girlfriend was with him. *Id.* While he was driving to Detroit with his girlfriend in the vehicle, he was pulled over by defendant Moore (a Michigan State Trooper). *Id.* at 4. He claims that defendant Moore did not have probable cause to pull him over and that, when he stopped, "more unknown Officer's [sic] came to the scene with guns out screaming to get out of the car...." *Id.* Plaintiff claims that defendant Moore assaulted him and searched his car without his consent. *Id.* at 4-5. After he was handcuffed, plaintiff claims that defendant Moore sexually assaulted him while the other officers watched. *Id.* at 5. Plaintiff also claims that the Sheriff's Department defendants falsely arrested him, unlawfully imprisoned him, and that the County defendants prosecuted him maliciously. *Id.* at 11. Finally, plaintiff claims that his prosecution and imprisonment were a "fraud upon the court." *Id.* at 12-13.

While his complaint is not a model of clarity, plaintiff appears to assert the following claims: (1) that one or more "police officers" arrested him without a warrant, probable cause or exigent circumstances; (2) that one or more "police officers" assaulted him; (3) and one or more "police officers" stood idly while plaintiff was assaulted; (4) that one or more of the defendants falsely arrested plaintiff; (5) plaintiff claims that the Adrian defendants and the County defendants failed to adequately train, supervise, or discipline the officers and that, pursuant to a policy, practice or custom, they were deliberately indifferent to or encouraged the harm caused by the officers; (6) that the County of Monroe, the City of Monroe, the County of Lenawee, and the City of Adrian are vicariously liable for acts of the officers, prosecutors, and judges; (7) the defendant officers falsely arrested and falsely imprisoned him; (8) that two or more County and City defendants allowed a "fraud in the court" and "schemed to retaliate"; (9) that two or more defendants allowed a malicious prosecution against him; (10) all defendants conspired to deprive him of his constitutional rights; and (11) all defendants caused him to be falsely arrested and imprisoned. While their alleged levels of participation vary, as does whether the claims are based on vicarious liability, a fair reading of plaintiff's complaint places his claims against defendants into the following categories: (1) excessive force and assault and battery (and a pattern or practice of same); (2) false imprisonment; (3) false arrest; and (4) malicious prosecution, which appears to encompass the allegations of a "fraud on the court." (Dkt.1). Plaintiff's complaint, in an effort to be as broad as possible, appears to allege, at one point or another, all categories of claims against all defendants. However, a review plaintiff's proposed amended complaint seems to clarify which claims he is pursuing against which defendants.

*4 In his proposed amended complaint, plaintiff only makes claims against the various police officers and police agencies. Plaintiff's complaint also includes only those claims arising from the alleged use of excessive force, including an alleged failure to train officers to use force properly, an alleged failure to assist plaintiff during the arrest, and an alleged failure to notify supervisory personnel that plaintiff was assaulted. (Dkt.1, 28). Reading the initial complaint in conjunction with the proposed amended complaint, plaintiff appears to assert the excessive force claims against the Sheriff's Department defendants and the Adrian defendants only, as these are the only defendants and the only claims that remain in the proposed amended complaint. Thus, it also appears that plaintiff's claims for false arrest, false imprisonment, and malicious prosecution were brought against some or all of the County defendants as he omits these claims from his proposed amended complaint and seeks to voluntarily dismiss these defendants. (Dkt.28, 29). Given the undersigned's conclusion that it would be futile for plaintiff to amend his complaint, all claims contained in the initial complaint are addressed.

B. Motion for Judgment on the Pleadings

The Adrian defendants move for judgment on the pleadings, asserting that the statute of limitations governing plaintiff's claims expired before he filed suit in federal court. (Dkt.19). The Adrian defendants assert that there can be no dispute that plaintiff's causes of action arose on April 10, 2003, when he was arrested. *Id.* at 2. Under 42 U.S.C. § 1983 and applicable Michigan law, the three-year limitations period began running on that date. Thus, the statute of limitations expired on April 10, 2006. *Id.* Given that plaintiff did not file this action until August 10, 2007, more than one year after the expiration of the statute of limitations, according to the Adrian defendants, his claims are time-barred. *Id.*

C. Motion for Summary Judgment

The County defendants and the Sheriff's Department defendants filed a motion for summary judgment on all of plaintiff's claims, also based on the statute of limitations. (Dkt.23). They point out that plaintiff's complaint falsely states that the underlying criminal prosecution ended in his favor. Indeed, plaintiff is serving a sentence on charges to which he pleaded guilty, arising from the events of April 10, 2003. *Id.* at 1. The County defendants and Sheriff's Department defendants also give a detailed statement of facts regarding the events of April 10, 2003. On April 10, 2003, the state police "OMNI team"^{FN3} received information that plaintiff would be traveling from Adrian to Monroe, Michigan with a quantity of powder cocaine. *Id.* A separate OMNI team advised that plaintiff "was under house arrest and was not to leave Lenawee County due to a court-ordered bond condition, pursuant to a pending sentence for narcotics." *Id.* The state police then surveilled plaintiff's home and observed him leaving his residence and traveling into Monroe County. *Id.* A traffic stop was then effectuated and, according to the officers, plaintiff admitted to transporting the cocaine with intent to sell and giving it to his girlfriend. *Id.*, Ex. A. The County defendants and the Sheriff's Department defendants submitted the register of actions from the state court criminal proceeding, which reflects that, during his pretrial hearing held on July 2, 2004, plaintiff pleaded guilty of possession with intent to deliver a controlled substance, as well as to habitual offender, fourth. *Id.*; Ex. B.

^{FN3.} Community leaders and law enforcement agencies in Hillsdale and Lenawee Counties partnered with the Michigan State Police and federal agencies to establish the Office of Monroe Narcotics Investigation (OMNI). OMNI is a multijurisdictional team with the common goal of removing drug dealers from the streets. See, http://www.michigan.gov/documents/OMNI-III_131198_7.pdf.

*5 The County defendants and Sheriff's Department defendants, like the Adrian defendants, argue that plaintiff's § 1983 claims are governed by the three-year Michigan personal injury statute of limitations.

Id. at 3, citing, *Banks v. City of Whitehall*, 344 F.3d 550, 553 (6th Cir.2003); *Wolfe v. Perry*, 412 F.3d 707 (6th Cir.2005). They also point out that, under Michigan law, claims of malicious prosecution, assault, battery, and false imprisonment are subject to a two-year statute of limitations. *Id.* at 2. Defendants argue that, even under the three-year limitations period, plaintiff's claims for malicious prosecution and false imprisonment are time-barred. They would have accrued, at the latest, on July 2, 2004 when he pleaded guilty and thus, the limitations expired, at the latest, on July 2, 2007. *Id.* at 2-3. Given that plaintiff filed this action on August 10, 2007, his claims are time-barred. *Id.* at 3.

D. Motion for Leave to File Amended Complaint^{FN4}

FN4. Plaintiff's motion for leave to amend will be denied via separate order, given that it is a non-dispositive motion and a report and recommendation is unnecessary. For all the same reasons that the undersigned recommends dismissing plaintiff's claims with prejudice, the motion to amend so too will be denied. This motion is discussed at length herein, given that it is essentially plaintiff's response to defendants' dispositive motions.

Rather than responding to defendants' dispositive motions, plaintiff filed a motion to amend his complaint and a proposed amended complaint. (Dkt.30, 28). Plaintiff argues that, as a pro se litigant, he was unaware that he had to state in his complaint why he could not have brought his claims within the applicable statute of limitations and sets forth those reasons in his proposed amended complaint. (Dkt.30, pp. 1-2). In his proposed amended complaint, plaintiff claims that, while he spent 10 months in jail awaiting disposition of the criminal charges against him, he made several attempts to obtain the names of the unknown officers who were at the scene of his arrest. (Dkt.28, p. 6, ¶ 39). He states that these requests were made to the various police agencies involved and he received no response to his requests. *Id.* Plaintiff also alleges in his proposed amended complaint that, after he was transported to the prison, he again attempted to obtain the names of the unknown officers, but no one responded to his requests. *Id.* at ¶ 40.

The Adrian defendants oppose plaintiff's motion to amend, arguing that plaintiff has not shown any basis for tolling the limitations period. (Dkt.41). Defendants argue that, while the applicable statute of limitations is determined under state law, when the limitation period begins to run is governed by federal law. *Id.* at 2, citing, *Ruff v. Runyon*, 258 F.3d 498 (6th Cir.2001); *Wilson v. Garcia*, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). And, according to defendants, under federal law, the statute of limitations begins to run when plaintiff knew or should have known about the injury that forms the basis of the claims. *Id.*, citing, *Friedman v. Estate of Presser*, 929 F.2d 1151, 1159 (6th Cir.1991). The focus of this inquiry is whether a "plaintiff has reason to know of his injury when he should have discovered it through the exercise of reasonable diligence." *Sevier v. Turner*, 742 F.2d 262, 273 (6th Cir.1984). The Adrian defendants argue that plaintiff fails to allege or show that he did not know (and should have known) of his alleged injuries at the time they occurred or that he did know (and should have known) the identity of the officers involved in his arrest. (Dkt.41, p. 3).

*6 Defendants suggest that plaintiff's claim is really an attempt to establish "fraudulent concealment," which, under limited circumstances, can operate to toll the limitations period where (1) a defendant wrongfully conceals their actions, (2) a plaintiff fails to discover the operative facts that are the basis of his cause of action within the limitations period, and (3) the plaintiff exercised due diligence until he discovered the facts. *Id.* at 3, citing, *Friedman, supra*. The Adrian defendants argue that plaintiff fails to even identify any act or wrong that was concealed by them. Further, plaintiff does not even state that he failed to discover his cause of action within the limitations period (or state when he actually discovered his claims) and fails to offer any evidence of due diligence. (Dkt.41, p. 4). The Adrian defendants assert that, clearly, plaintiff had actual knowledge of the facts underpinning his claims on the day he was

arrested; or, at the very latest, when the information and witness list were filed in the underlying criminal proceeding on June 11, 2003. *Id.* at 4, 8; Ex. B. The Adrian defendants point out that the information plaintiff now claims was "concealed" was obviously used by him and his lawyer in reach the plea agreement. *Id.* at 9.

Defendant Moore filed a response to plaintiff's motion for leave to amend on April 9, 2008. (Dkt.42). Defendant Moore's argument is twofold. First, he too suggests that plaintiff's motion for leave to amend would be futile because his claims are barred by the statute of limitations. *Id.* at 5. Defendant Moore's argument is substantially similar to the Adrian defendants' position on this issue and need not be repeated here.^{FN5} Second, defendant Moore suggests that leave to amend is futile because, pursuant to *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), plaintiff's claims are barred by *res judicata* where he pleaded guilty to the underlying criminal charges from which his civil claims arose. *Id.* Defendant Moore explains that, throughout the complaint, plaintiff makes assertions that "call into question the validity of his plea based conviction." *Id.* at 8. For example, plaintiff challenges whether the police had probable cause to stop his car and he questions the validity of the seizure of cocaine. *Id.* According to defendant Moore, this is "precisely the type of challenge that is prohibited" under *Heck v. Humphrey*. *Id.* Plaintiff pleaded guilty to possession with intent to deliver; because he had no criminal appeal, "he is now attempting to use this § 1983 claim to collaterally attack the factual circumstances of his conviction for money damages." *Id.* According to defendant Moore, since plaintiff's claims "factually relate to the validity of plaintiff's conviction and confinement, his claim is legally barred." *Id.* Stated differently, where success in a civil suit "would implicitly question the validity of conviction or duration of sentence, a litigant must first achieve favorable termination of his available state or federal habeas opportunities to challenge the underlying conviction or sentence." *Id.* at 8-9, quoting, *Muhammad v. Close*, 540 U.S. 749, 750, 124 S.Ct. 1303, 158 L.Ed.2d 32 (2004).

FN5. The County defendants and the Sheriff's Department defendants joined in their co-defendants' responses to plaintiff's motion to amend on May 6, 2008, but do not offer any additional substantive argument. (Dkt.44).

*7 Defendant Moore also argues that plaintiff's state law tort claims are barred for the same reasons. In *Moore v. Michigan Nat. Bank*, 368 Mich. 71, 73-74, 117 N.W.2d (1962), the Michigan Supreme Court held that a conviction, unless procured by fraud or unfair means, is conclusive evidence of probable cause. (Dkt.42, p. 9). In *Moore*, the court dismissed the plaintiff's malicious prosecution claim because the plaintiff's guilty plea rendered it factually impossible for him to demonstrate that probable cause was lacking. (Dkt.42, p. 9). Thus, defendant Moore suggests that plaintiff's proposed amendment is entirely futile and should be denied.

Plaintiff filed reply briefs in support of his motion for leave to amend on May 12, 2008. (Dkt.46, 47). In his first reply, he argues that his proposed amended complaint sets forth sufficient facts to establish that the statute of limitations should be tolled given that he was "prevented from discovery the merits of his claim or the identity of those officers involved, in order to bring his claim before now." (Dkt.46, p. 2). Further, plaintiff claims that he still does "not know the identities of all the police officers who were involved in ... his April 10, 2003 arrest." *Id.* at 3, 117 N.W.2d 105. Plaintiff also suggests that he exercised due diligence by sending letters to the various police departments. *Id.*

In his second reply, plaintiff addresses defendant Moore's argument that his claims are barred by *Heck v. Humphrey*. (Dkt.47). He argues that the grant of relief in his proposed amended complaint will not invalidate his conviction and argues that the success of an excessive force claim does not rest on the overturning of a conviction. *Id.* at 2-3, citing, *Fox v. DeSoto*, 489 F.3d 227 (6th Cir.2007).

In response to the Adrian defendants' challenge to provide documentation or testimonial evidence to support his claims that he exercised due diligence (Dkt.45), plaintiff also submitted an affidavit purporting to detail his efforts to obtain information regarding his causes of action. (Dkt.48). He claims to have sent two letters to the Adrian police department and two letters to the Monroe County Sheriff's Department and also claims that he did not receive any responses. *Id.* Plaintiff further explains that he did not know who the "Chief of the City of Adrian" was until reviewing the affidavit of Chief Collins. *Id.* Thus, according to plaintiff, he could not have brought suit any earlier and exercised due diligence in trying to learn the names of the defendants before the statute of limitations expired. (Dkt.46, 48).

E. Motion to Voluntarily Dismiss Certain Defendants

As noted above, plaintiff filed a motion to "voluntarily" dismiss certain defendants. (Dkt.29). Plaintiff states no basis for his motion, but he purports to "hereby voluntarily dismiss," "without prejudice," Prosecutor Weipert, Prosecutor Unknown, Magistrate Tina Todd, Circuit Judge William L. Lavoy, Unknown Chief of City of Adrian, Prosecutor Swinkey, the Monroe County Prosecutor's office, District Judge Unknown, the County of Monroe, and the County of Lenawee. *Id.* The Adrian defendants responded to plaintiff's motion, indicating that they will stipulate to the dismissal of the "Chief of the City of Adrian" only if that dismissal is with prejudice. (Dkt.40). The remaining defendants have not filed a response to this motion. The undersigned notes that, pursuant to Fed.R.Civ.P. 41(a)(2), after responsive pleadings are filed, voluntary dismissals must be obtained by leave of the Court unless all the parties who have appeared agree to the dismissal.

III. DISCUSSION

A. Standard of Review

*8 A defendant raising the statute of limitations as an affirmative defense has the burden of proving that the action is time-barred. Campbell v. Grand Trunk W. R.R. Co., 238 F.3d 772, 775 (6th Cir.2001). To prevail on this affirmative defense, defendants must prove both that: (1) the statute of limitations has run; and (2) that no genuine issue of material fact exists as to when plaintiff's cause of action accrued. *Id.* If defendants meet this burden, the burden then shifts to plaintiff to establish an exception to the statute of limitations. *Id.* The nonmoving party may not rest on the mere allegations in the pleadings. *Id.* However, if defendants fail to meet their burden of proof, plaintiff has no obligation to proffer any additional evidence to rebut the statute of limitations defense. Fonseca v. CONRAIL, 246 F.3d 585, 590-91 (6th Cir.2001).

The nature of plaintiff's burden with respect to establishing an exception depends on the exception at issue. This Court recently agreed with the Tenth Circuit that "for equitable tolling of the statute of limitations, the burden lies with the plaintiff; for [tolling based on] administrative exhaustion under 42 U.S.C. § 1997e, the burden lies with the defendants." Jones v. Richardson, 2008 WL 907383, *11 (E.D.Mich.2008), quoting, Roberts v. Barreras, 484 F.3d 1236 (10th Cir.2007).

B. Statute of Limitations

Statutes of limitation are established to extinguish rights, justifiable or not, that might otherwise be asserted. Kavanagh v. Noble, 332 U.S. 535, 539, 68 S.Ct. 235, 92 L.Ed. 150 (1947). They are designed, among other things, to compel plaintiffs to exercise their rights of action within a reasonable time; to

protect potential defendants from the protracted fear of litigation; and to promote judicial efficiency by preventing defendants and courts from having to litigate stale claims. Moll v. Abbott Labs., 444 Mich. 1, 14, 506 N.W.2d 816 (1993); see also, U.S. v. \$515,060.42 in U.S. Currency, 152 F.3d 491, 503 (6th Cir. 1998). As such, these statutory restrictions are not simply technicalities; rather, they are fundamental to a well-ordered judicial system. Bd. of Regents of the Univ. of the State of N.Y. v. Tomanio, 446 U.S. 478, 487, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980).

Because Congress did not specifically adopt a statute of limitations governing § 1983 actions, "federal courts must borrow the statute of limitations governing personal injury actions in the state in which the section 1983 action was brought." Banks v. City of Whitehall, 344 F.3d 550, 553 (6th Cir.2003), citing Wilson v. Garcia, 471 U.S. 261, 275-276, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). The Sixth Circuit has held that the "appropriate statute of limitations to be borrowed for § 1983 actions arising in Michigan is the state's three-year limitations period for personal injury claims." Drake v. City of Detroit, Michigan, 266 Fed.Appx. 444, 448 (6th Cir.2008), citing, Mich. Comp. Laws § 600.5805(10); Chippewa Trading Co. v. Cox, 365 F.3d 538, 543 (6th Cir.2004); see also, Owens v. Okure, 488 U.S. 235, 249-250, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989) (Where "state law provides multiple statutes of limitation for personal injury actions, courts considering § 1983 claims should borrow the general or residual statute for personal injury actions.").

*9 The characterization of a claim, including the determination of when the cause of action accrued, is determined by federal law. Wallace v. Kato, ---U.S. ---, 127 S.Ct. 1091, 1095, 166 L.Ed.2d 973 (2007). The statute of limitations begins to run under federal law "when plaintiffs knew or should have known of the injury which forms the basis of their claims." Ruff v. Runyon, 258 F.3d 498, 500 (6th Cir.2001). "In determining when the cause of action accrues in section 1983 actions, [courts] have looked to what event should have alerted the typical lay persons to protect his or her rights." Kuhnle Bros., Inc. v. County of Geauga, 103 F.3d 516, 520 (6th Cir.1997).

1. Defendants have met their burden of proving that plaintiff's excessive force claim is barred by the statute of limitations.

"A § 1983 claim for excessive force in effectuating an arrest accrues at the time of arrest." Fox, 489 F.3d at 233, citing, Wallace v. Kato, 127 S.Ct. at 1095. When there are no disputed facts on this question, it is for the Court to decide. See, Moll, 444 Mich., at 26, 506 N.W.2d 816 (Where the facts are undisputed, whether a cause of action is barred by the statute of limitations is a question of law to be determined by the trial judge.). There is no dispute that plaintiff's arrest occurred on April 10, 2003. April 10, 2003, therefore, sets the date from which any § 1983 excessive force claim accrued. There is also no dispute that plaintiff's complaint was not filed until August 8, 2007, well in excess of the three years prescribed by Michigan's statute of limitations. Thus, the undersigned concludes that plaintiff's excessive force claim is presumptively time-barred.

2. Plaintiff has failed to establish that tolling of his excessive force claim under the Michigan fraudulent concealment statute is appropriate.^{FN6}

FN6. Plaintiff neither asserts that the statute of limitations should be tolled as to any of his other claims, including those based on any purported policy, pattern, or practice of any of defendants, nor does he claim that any policy, pattern, or practice based causes of actions accrued such that the statute of limitations had not already run when he filed his complaint.

Acknowledging that the **limitations period** expired before he filed suit, plaintiff argues, however, that the statute of limitations with respect to this excessive force claim should be **tolled** under Michigan's fraudulent **concealment** statute. For **1983** claims, the federal courts generally rely on state law for **tolling** rule, just as with the length of the appropriate **limitations period**. Wallace, 127 S.Ct. at 1098. Michigan law provides that the statute of limitations may be **tolled** where a defendant has **concealed** the **facts** giving rise to the cause of action:

If a person who is or may be liable for any claim fraudulently **conceals** the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred.

Mich. Comp. Laws § 600.5855. The acts constituting fraudulent **concealment** are "(1) wrongful **concealment** of their actions by the defendants; (2) failure of the plaintiff to discover the operative **facts** that are the basis of his cause of action within the **limitations period**; and (3) plaintiff's due diligence until discovery of the **facts**." Evans v. Pearson Enterprises, Inc., 434 F.3d 839, 851 (6th Cir.2006), quoting, Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389, 394 (6th Cir.1975).

***10** Plaintiff has neither alleged nor proven that equitable **tolling** is applicable with respect to his excessive force claim against defendant Moore. Thus, this claim remains time-barred as set forth above. With respect to his excessive force claims against the Adrian police department and the Monroe County Sheriff's Department, plaintiff asserts that he failed to discover the operative facts of his claim (i.e., the identity of all the alleged wrongdoers) based on the failure of these entities to respond to his inquiries. Even if true, plaintiff's claim for equitable tolling must fail for several reasons. As the Adrian defendants correctly point out, plaintiff fails to explain how or when he actually discovered his claim. That is, he offers no explanation or evidence regarding any newly discovered evidence or information obtained *after* the limitations period expired, which is required by § 600.5855. Indeed, it appears that plaintiff had exactly the same information in his possession on the day he was arrested as the day he filed suit. Additionally, plaintiff had access to the information and witness list that were filed in the underlying proceeding on June 11, 2003. (Dkt. 41, p. 8; Ex. B). The Court agrees with the Adrian defendants that the information plaintiff now claims was somehow "**concealed**" from him, was apparently used by him and his lawyer in reaching the plea agreement. *Id.* at 9. Further, failing to answer letters is not fraudulent **concealment**. Thus, plaintiff cannot establish either that defendants "wrongfully **concealed**" anything or that he "failed to discover his cause of action" before the expiration of the **limitations period**. With Michigan's equitable **tolling** provision unavailable, plaintiff's excessive force claim, as to all remaining defendants against whom this claim is asserted, is time-barred by the statute of limitations. See, Hedgcs v. U.S., 404 F.3d 744, 751 (3d Cir.2005) (equitable **tolling** is "an extraordinary remedy which should be extended only sparingly," and is unavailable unless the plaintiff exercised due diligence in pursuing his claims).

3. Heck v. Humphrey neither applies to, nor affects, the accrual of plaintiff's excessive force claim.

Plaintiff disputes defendant Moore's argument that *Heck* bars his claim for excessive force. Plaintiff is correct, however, this does not change the result reached above because the statute of limitations for the excessive force claim accrued on the date of plaintiff's arrest and nothing has deferred that accrual. In Wallace v. Kato, the Supreme Court clarified that "the *Heck* rule for deferred accrual is called into play only when there exists 'a conviction or sentence that has not been ... invalidated,' that is to say, an 'outstanding criminal judgment.'" Warner v. McMinn Co., 2007 WL 3020510 (E.D.Tenn.2007), quoting, Wallace v. Kato, 127 S.Ct. at 1097-1098. Thus, plaintiff is correct that *Heck* is not generally a bar to a § 1983 claim of excessive force, however, *Heck* also does not operate to toll the limitations period for such a claim because, as set forth above, a "§ 1983 claim for excessive force in effectuating an arrest accrues

at the time of arrest." Fox, 489 F.3d at 233. Again, plaintiff's excessive force claim accrued on April 10, 2003 and expired on April 10, 2006, well before plaintiff filed this suit.

4. Plaintiff's false imprisonment and false arrest claims are barred by the statute of limitations and *Heck v. Humphrey* does not defer accrual of the applicable statute of limitations.

*11 In *Wallace v. Kato*, the Supreme Court analyzed when claims of false imprisonment and false arrest (which overlap) begin to accrue. The Court observed that, "[r]eflective of the fact that false imprisonment^{FN7} consists of detention without legal process, a false imprisonment ends once the victim becomes held pursuant to such process—when, for example, he is bound over by a magistrate or arraigned on charges." *Wallace v. Kato, 127 S.Ct. at 1096*. After such legal process begins, "unlawful detention forms part of the damages for the 'entirely distinct' tort of malicious prosecution, which remedies detention accompanied, not by absence of legal process, but by wrongful institution of legal process." *Id.* The Court held that, for a claim for false arrest, "where the arrest is followed by criminal proceedings, [the statute of limitations] begins to run at the time the claimant becomes detained pursuant to legal process." *Id.* at 1100.

FN7. After noting the overlap between the two claims, the Court referred to them collectively as "false imprisonment" throughout much of its opinion. *Wallace, 127 S.Ct. at 1095*.

Based on this analysis, the Court rejected the petitioner's contention that his false imprisonment ended when he was released from custody. Rather, the Court concluded, his false imprisonment "ended much earlier, when legal process was initiated against him, and the statute [of limitations] would have begun to run from that date...." *Id.*; see also, *Jones v. Whittaker, 2008 WL 2397716, *3 (W.D.Ky.2008)* (The plaintiff's " § 1983 claim arises from his alleged false arrest and false imprisonment, both of which would have ended when the Plaintiff became held pursuant to legal process on ... the date of his arraignment.").

Here, plaintiff was arraigned on June 13, 2003. (Dkt.23, Ex. 2). Under *Wallace*, the statute of limitations for plaintiff's false imprisonment and false arrest claims began to accrue on that date. Thus, the limitations period expired on June 13, 2006, long before plaintiff filed this lawsuit on August 8, 2007. Plaintiff's claims for false imprisonment and false arrest are therefore time-barred.

Moreover, the delayed accrual rule for malicious prosecution set forth in *Heck v. Humphrey* does not apply to plaintiff's false arrest and false imprisonment claims. As the Sixth Circuit recently noted in *Fox*, the *Wallace* Court "rejected both the argument that the statute of limitations on a false arrest claim should begin only after 'an anticipated future conviction ... occurs and is set aside,' and that the statute of limitations on such a claim should be tolled until an anticipated future conviction is set aside." *Fox, 489 F.3d at 235*, quoting, *Wallace, 127 S.Ct. at 1098-1099* (internal citations omitted). Thus, "the possibility that the plaintiff's already-accrued § 1983 [false imprisonment] claims might impugn an anticipated future conviction did not trigger the *Heck* rule for deferred accrual." *Fox, 489 F.3d at 235*. Thus, there is no basis under *Heck v. Humphrey* for deferring the accrual of the three-year statute of limitations applicable to these claims.

C. Plaintiff Fails to State a Claim for Malicious Prosecution Under § 1983 and Any State Law Claims Must Fail Because His Conviction Was Not Set Aside.

*12 Plaintiff's malicious prosecution claim is barred by *Heck v. Humphrey*. In *Heck*, the Supreme Court held that the plaintiff's post-conviction action under § 1983 for claims analogous to the tort of malicious prosecution (brought during the pendency of his state-court criminal appeal) would not accrue until a final adjudication in *Heck's* favor in state court, since the tort of malicious prosecution requires final adjudication in favor of the accused and any determination by the federal court regarding the legality of the prosecution would necessarily affect the validity of the state court proceedings. *Heck v. Humphrey*, 512 U.S. at 480-487. The Court held that a "claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983." *Id.* at 486-487. *Heck* stands for the "proposition that in order to bring a section 1983 suit challenging the constitutionality of a conviction, a plaintiff must prove that the conviction has been reversed on direct appeal or otherwise declared invalid." *Moore v. Hayes*, 1998 WL 432474, *6 (6th Cir.1998). In this case, therefore, plaintiff has simply failed to state a claim for malicious prosecution because he has not established that his conviction was set aside. To the extent that plaintiff asserts that his purported malicious prosecution resulted from some policy, pattern, or practice, that claim too must fail for the same reason. See, e.g., *Crespo v. New York City Police Comm'r*, 930 F.Supp. 109, 117 (S.D.N.Y.1996) (Claim that prosecution resulted from policy of perjury and falsification of documents did not accrue for limitations purposes until such time as the underlying criminal action against plaintiff was terminated in plaintiff's favor.).

Moreover, if plaintiff intended to assert state-law claims of false arrest, false imprisonment, or malicious prosecution, in addition to pursuing these theories as federal constitutional claims under § 1983, his conviction requires the dismissal of these state-law claims, for the same reasons set forth above. As defendant Moore pointed out, "[u]nder Michigan law, a plaintiff must demonstrate the absence of probable cause [to arrest] to prevail in claims of malicious prosecution, false arrest, or false imprisonment." *Bell v. Raby*, 2000 WL 356354, *8, n. 13 (E.D.Mich.2000), citing, *Moore v. Michigan Nat'l Bank*, supra; *Blase v. Appicelli*, 195 Mich.App. 174, 489 N.W.2d 129, 131 (1992); *Tope v. Howe*, 179 Mich.App. 91, 445 N.W.2d 452, 459 (1989). This is so because a criminal conviction is "conclusive proof of probable cause," which defeats these claims. *Bell*, at *8 n. 13, quoting, *Moore v. Michigan Nat'l Bank*, 368 Mich. at 72, 117 N.W.2d 105. Under Michigan law, this general rule also applies to convictions resulting from a guilty plea. *Blase*, 195 Mich.App. at 178, 489 N.W.2d 129. Thus, to the extent plaintiff asserts any such state law claims, they too should be dismissed.

IV. RECOMMENDATION

*13 Based on the foregoing, the undersigned **RECOMMENDS** that defendants' motions for judgment on the pleadings and for summary judgment be **GRANTED**, that plaintiff's motion to voluntarily dismiss certain defendants be **DENIED** as **MOOT**, and that this matter be **DISMISSED** in its entirety **WITH PREJUDICE**.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 10 days of service of a copy hereof, as provided for in *28 U.S.C. § 636(b)(1)* and Local Rule 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir.1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec. V. of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir.1991); *Smith*

v. Detroit Fed'n of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Under Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Within 10 days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall not exceed 20 pages in length unless such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections by motion order. If the Court determines objections are without merit, it may rule without awaiting the response to the objections.

E.D.Mich., 2008.

McCray v. Moore

Not Reported in F.Supp.2d, 2008 WL 4225762 (E.D.Mich.)

Motions, Pleadings and Filings ([Back to top](#))

• [2:07cv13297](#) (Docket) (Aug. 8, 2007)

END OF DOCUMENT

Exhibit - 23

Court of Appeals of Michigan.

**LUMBER VILLAGE, INC., a Michigan corporation,
Plaintiff-Appellant,**

v.

**Thomas S. SIEGLER and Priscilla J. Siegler,
Defendants, Third-Party Plaintiffs.**

and

**L.M. BEAMAN CORPORATION, a Michigan
corporation, and Larry M. Beaman and Dorothy E.
Beaman, jointly and severally, Defendants,**

v.

**BYRON CENTER STATE BANK, a Michigan
corporation, Third-Party Defendant-Appellee.**

and

**ATLAS FARM & INDUSTRIAL BUILDING COMPANY,
INC., a Michigan corporation, Plaintiff,**

v.

Thomas and Priscilla SIEGLER, Defendants.

Docket No. 67887.

Submitted May 3, 1984.

Decided June 28, 1984.

Released for Publication Oct. 19, 1984.

Payee, who supplied materials for construction of pole barn, brought contract action against builder and sought to foreclose mechanic's lien on the property after drawee bank paid proceeds of checks from owner to builder which, as copayee, forged payee supplier's endorsements. Owners and payee filed third-party complaints against drawee bank. The Circuit Court, Kent County, Stuart Hoffius, J., granted bank's motion for accelerated judgment, and payee appealed. The Court of Appeals, Allen, J., held that: (1) due process clauses in State and Federal Constitutions did not mandate that statutory limitation period commence to run upon discovery of existence of the cause of action rather than at time the cause of action accrued; (2) there was no fraudulent concealment within meaning of limitations statute because there was no affirmative act or misrepresentation; (3) bank's mere silence was not sufficient to warrant invoking of equitable estoppel so as to preclude bank's pleading of statute of limitations; and (4) payee failed to plead a cause of action in fraud which was separate and apart from its untimely claim based on the forged instrument.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote

30 Appeal and Error

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(A) Issues and Questions in Lower Court

30k170 Nature or Subject-Matter of Issues or Questions

30k170(2) k. Constitutional Questions. Most Cited Cases

General rule of law is that constitutional challenges to a statute may not be raised for first time on appeal.

[2] KeyCite Citing References for this Headnote

92 Constitutional Law

92XXVII Due Process

92XXVII(E) Civil Actions and Proceedings

92k3971 k. Time for Proceedings; Limitation or Suspension of Remedy. Most Cited Cases
(Formerly 92k308)

State and federal due process clauses did not mandate that statutory limitation period commenced to run upon discovery of existence of a cause of action rather than at time the cause of action accrued even where statutory period may have expired by time of discovery. U.S.C.A. Const.Amends. 5, 14.

[3] KeyCite Citing References for this Headnote

241 Limitation of Actions

241II Computation of Period of Limitation

241II(F) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action

241k104 Concealment of Cause of Action

241k104(1) k. In General. Most Cited Cases

As a general rule, for fraudulent concealment to postpone running of period of limitation, the fraud must be manifested by an affirmative act or misrepresentation.

[4] KeyCite Citing References for this Headnote

241 Limitation of Actions

241II Computation of Period of Limitation

241II(F) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action

241k104 Concealment of Cause of Action

241k104(2) k. What Constitutes Concealment. Most Cited Cases

Mere fact that payee was named as a payee on checks on which its endorsements were forged by copayee did not create fiduciary relationship between payee and drawee bank such as would require bank to disclose to payee existence of causes of action for the forged endorsements and, thus, there was

no fraudulent concealment which would postpone running of applicable period of limitation. M.C.L.A. § 600.5805.

[5]  KeyCite Citing References for this Headnote

↳ 241 Limitation of Actions

↳ 241II Computation of Period of Limitation

↳ 241II(F) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action

↳ 241k104 Concealment of Cause of Action

↳ 241k104(2) k. What Constitutes Concealment. Most Cited Cases

As relating to fraudulent concealment for purposes of tolling running of statutory period of limitation, drawee bank had no duty to disclose to payee that checks made payable to payee and copayee were paid over forged endorsements. M.C.L.A. § 600.5805.

[6]  KeyCite Citing References for this Headnote

↳ 156 Estoppel

↳ 156III Equitable Estoppel

↳ 156III(A) Nature and Essentials in General

↳ 156k54 k. Knowledge of Facts. Most Cited Cases

Special knowledge of the defendant may be a consideration in applying estoppel.

[7]  KeyCite Citing References for this Headnote

↳ 156 Estoppel

↳ 156III Equitable Estoppel

↳ 156III(B) Grounds of Estoppel

↳ 156k95 k. Silence. Most Cited Cases

While silence or inaction, in certain situations, may invoke doctrine of estoppel, silence does not invoke the doctrine unless the party remaining silent has a duty or obligation to disclose.

[8]  KeyCite Citing References for this Headnote

↳ 241 Limitation of Actions

↳ 241I Statutes of Limitation

↳ 241I(A) Nature, Validity, and Construction in General

↳ 241k13 k. Estoppel to Rely on Limitation. Most Cited Cases

Where drawee bank had no obligation to disclose to payee fact that payee's endorsements of two checks had been forged by copayee, bank's mere silence was not sufficient to warrant invoking of equitable estoppel so as to preclude bank's pleading of statute of limitations. M.C.L.A. § 600.5805.

[9]  KeyCite Citing References for this Headnote

↳ 52 Banks and Banking

↳ 52III Functions and Dealings

↳ 52III(C) Deposits


↳ 52k147 Payment of Forged or Altered Paper

↳ 52k148 Liabilities of Bank to Depositor, Payee, or Owner

52k148(2) k. Liability of Bank Paying Check on Forged or Fraudulent Indorsement. Most

Cited Cases

Drawee bank had no duty to disclose to payee fact that checks issued to it and copayee had been paid over forged endorsements and, consequently, payee would not be able to prevail upon silent fraud claim.

[10]  KeyCite Citing References for this Headnote

184 Fraud

184| Deception Constituting Fraud, and Liability Therefor

184k19 Reliance on Representations and Inducement to Act

184k20 k. In General. Most Cited Cases

In addition to duty to disclose, silent fraud requires a plaintiff to establish reliance.

[11]  KeyCite Citing References for this Headnote

52 Banks and Banking

52III Functions and Dealings

52III(C) Deposits

52k147 Payment of Forged or Altered Paper

52k148 Liabilities of Bank to Depositor, Payee, or Owner

52k148(2) k. Liability of Bank Paying Check on Forged or Fraudulent Indorsement. Most

Cited Cases

Payee did not realistically rely on drawee bank's failure to disclose fact that checks had been paid over payee's endorsements which were forged by copayee and, thus, payee would not be able to prevail upon a silent fraud claim against bank.

****655 *688** Carruthers & Halverson Associates by James G. Halverson, East Lansing, for plaintiff-appellant.

Freihofer, Oosterhouse & DeBoer, P.C. by Robert A. Buchanan and Clifford H. Bloom, Grand Rapids, for Byron Center State Bank.

Before BEASLEY, P.J., and ALLEN and BREIGHNER,^{FN*} JJ.

FN* Martin B. Breighner, 33rd Judicial Circuit Judge, sitting on Court of Appeals by assignment pursuant to Const. 1963, Art. 6, Sec. 23, as amended 1968.

ALLEN, Judge.

Plaintiff, Lumber Village, Inc., appeals as of right from a September 22, 1982, order of accelerated judgment in favor of third-party defendant, Byron Center State Bank, pursuant to GCR ***689** 1963, 116.1(5). Issue III raised on appeal is of first impression in Michigan.

In 1977, Thomas S. Siegler and his wife, Priscilla, undertook to have built for them a pole barn building for use in their horse stable operation business. For this purpose they employed Larry M. Beaman and L.M. Beaman Construction Corporation as the builder and secured financing for construction of the barn by a mortgage for \$68,000 from the Byron Center State Bank. Plaintiff furnished building materials for the barn project, the bulk being delivered between September 27, 1977, and October 26, 1977, with smaller deliveries as late as January, 1978. Two money order checks totaling \$30,250 were issued by the Byron Center State Bank to L.M. Beaman and Lumber Village, Inc. in September, 1977. The purpose of making the money orders payable to both parties was to avoid creation of a mechanics lien in favor of plaintiff.

The first check for \$15,250 was dated September 22, 1977, and was picked up by Mr. Siegler, who gave the check to Beaman. Unbeknownst to either the bank or the Sieglers, and without the authorization of plaintiff, Beaman endorsed the name of plaintiff and deposited the check in his account at the Bank of Lansing on September 26, 1977. The second check, dated September 30, 1977, and in the amount of \$15,000 was similarly endorsed by Beaman and deposited in his account on October 3, ***656** 1977. The first check was paid by Byron Center State Bank on September 27, 1977, and the second check was paid by the bank on October 5, 1977.

Plaintiff did not receive payment from Beaman and, in April, 1978, recorded a mechanic's lien on the Siegler property. Mr. Siegler first became aware that the checks had not been properly ***690** negotiated when he was served with notice of the lien on April 12, 1978. Mr. Siegler immediately notified bank, and this appears to be the first time that the bank or Siegler became aware that the instruments had been paid over forged endorsements. In March, 1979, Lumber Village filed a contract action against Beaman and sought to foreclose the mechanic's lien on the Siegler property. After considerable difficulty, service was finally obtained on Beaman, and a default judgment against him was entered in May, 1980.

In February, 1981, an order was entered permitting the Sieglers to file a third-party complaint adding the Byron Center State Bank as an additional party-defendant. Though the bank and the Sieglers knew of the forgery and that Lumber Village was named as a payee on the money orders, this information had never been communicated to Lumber Village. The bank's failure to inform plaintiff of the forgery is the subject of the instant appeal. In March, 1981, the Sieglers filed a third-party complaint against the bank. This was the first time Lumber Village learned of the forgery. In April, 1981, the Sieglers filed bankruptcy, and the cause was removed to the United States Bankruptcy Court but was remanded July 28, 1981. In August, 1981, Lumber Village, Inc. moved for leave to file a third-party complaint against Byron Center State Bank, and, by stipulation and order, a third-party complaint against the bank was filed in December, 1981.

Third-party defendant bank pled the three-year statute of limitations for forged instruments, M.C.L. § 600.5805; M.S.A. § 27A.5805, as an affirmative defense and, on June 28, 1982, moved for accelerated judgment. In a written opinion dated September 22, 1982, the trial court made the following findings:

***691** 1. For purposes of the motion, it was conceded that Lumber Village, Inc. did not become aware of the checks or the forgery until after the Sieglers filed their cross-complaint against the bank around April of 1981.

2. Based on Continental Casualty Co. v. Huron Valley National Bank, 85 Mich.App. 319, 271 N.W.2d 218 (1978), the three year statute of limitations applies to the alleged conversion and such statute began

to run in September-October 1977, when the checks were paid on a forged endorsement and not in March 1981 when the plaintiff discovered the conversion or forgery.

3. Estoppel from asserting the defense of the running of the statute of limitations is unavailable in Michigan.

4. Estoppel and/or fraudulent concealment sufficient to toll the running of the statute of limitations requires active misconduct or affirmative acts or misrepresentations and mere silence is inadequate.

5. A separate or independent cause of action for silent fraud or fraudulent concealment requires detrimental reliance and, since Lumber Village, Inc. was unaware of the instruments, it could not have relied thereon to its detriment in any way.

The parties frame the issues differently both in content and number. As is our practice in such instances, we have rearranged and reworded the issues as follows:

I. WHETHER CONSTITUTIONAL DUE PROCESS REQUIRES THAT A STATUTORY PERIOD OF LIMITATIONS BEGIN TO RUN ON THE DATE A CAUSE OF ACTION IS DISCOVERED RATHER THAN THE DATE THE WRONG OCCURRED.

II. WHETHER DEFENDANT FRAUDULENTLY CONCEALED THE EXISTENCE OF A CAUSE OF ACTION SO AS TO PREVENT *692 THE STATUTE OF LIMITATIONS FROM RUNNING **657 UNTIL TWO YEARS AFTER DISCOVERING THE ACTION.

III. WHETHER DEFENDANT SHOULD BE ESTOPPED FROM ASSERTING THE STATUTE OF LIMITATIONS AS A DEFENSE TO PLAINTIFF'S CAUSE OF ACTION.

IV. WHETHER PLAINTIFF SUFFICIENTLY STATED A CAUSE OF ACTION FOR SILENT FRAUD TO ALLOW THE CASE TO GO TO THE TRIER OF FACT ON THE MERITS.

I.

[1] ^{****} Initially, plaintiff presents the constitutional argument that due process requires that the statutory period of limitation starts running from the day of discovery by plaintiff of the cause of action, rather than from the date that the cause of action accrued. To hold otherwise, argues plaintiff, would result in the extinguishing of a payee's right to bring suit before the payee discovered that a cause of action existed. The trial court's opinion did not address the constitutional challenge, and nothing in the file suggests that the constitutional issue was raised at the trial level. The general rule of law is that constitutional challenges to a statute may not be raised for the first time on appeal. Brookdale Cemetery Ass'n v. Lewis, 342 Mich. 14, 18, 69 N.W.2d 176 (1955); Petterman v. Haverhill Farms, Inc., 125 Mich.App. 30, 33, 335 N.W.2d 710 (1983), Michigan Carousel, Inc. v. Cecil, 66 Mich.App. 248, 251, 238 N.W.2d 825 (1975).

[2] ✓ Moreover, federal decisions find no violation of due process under the federal constitution even if the statute in question extinguishes a cause of action before it is discovered to exist. Adair v. Koppers Co., Inc., 541 F.Supp. 1120, 1128 (N.D. Ohio, 1982) (Ohio's ten year statute of limitations for *693 actions against architects and engineers); Jewson v. Mayo Clinic, 691 F.2d 405, 411-412 (CA 8, 1982) (two-year limitation statute starts to run when treatment ceases rather than when injury is discovered); Mathis v. Eli Lilly & Co., 719 F.2d 134, 141 (CA 6, 1983); (Tennessee's ten-year limitation period for filing tort claim where injury was not discovered until 25 years after exposure); Duke Power Co. v. Environmental Study Group, Inc., 438 U.S. 59, 82-93, 98 S.Ct. 2620, 2635-2640, 57 L.Ed.2d 595 (1978). (Price-Anderson Act limiting liability of operator of nuclear plant arising from nuclear accident).

Citing Dyke v. Richard, 390 Mich. 739, 213 N.W.2d 185 (1973), plaintiff argues that, if not under the federal constitution, at least under the Michigan constitution, a statute of limitations is unreasonable and therefore constitutionally flawed where it extinguishes a cause of action before the injured party knew or could have known of the cause of action.^{FN1} However, this Court ruled in Szlinis v. Moulded Fiber Glass Cos., Inc., 80 Mich.App. 55, 66, 263 N.W.2d 282 (1977), that Dyke "restricted this approach to malpractice cases". More on point, for purposes of the instant case, is the Michigan Supreme Court's ruling seven years after Dyke in O'Brien v. Hazelet & Erdal, 410 Mich. 1, 299 N.W.2d 336 (1980). That case involved suits by various plaintiffs against state licensed architects or contractors for injuries arising out of defective or unsafe improvements to buildings. Citing Dyke, the injured parties claimed that the six-year period of limitation violated due process because it barred a cause of action before the injured parties *694 could reasonably know that a defect existed.^{FN2} In a unanimous opinion, the six-year period of limitation was upheld. Since a review of relevant federal and state law discloses that neither the federal nor state constitution mandates that a "discovery" rule be utilized when applying a statutory **658 period of limitation, we find Issue I to be without merit.

FN1. For an excellent review of the growing reliance upon state constitutions, rather than the federal constitution, as the primary guarantor of fundamental rights, see Utter *Freedom & Diversity In a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights*, 7 Puget Sound L.Rev. 491 (1984).

FN2. See O'Brien, supra, 410 Mich. p. 15, fn. 15, 299 N.W.2d 336.

II.

Did the defendant bank fraudulently conceal from plaintiff supplier of lumber and materials the existence of a cause of action? If the existence of a cause of action is concealed by the party who would be liable, the person entitled to sue may bring the action within two years after the date of discovery or after the date the existence of the cause should have been discovered, despite any applicable statute of limitations. M.C.L. § 600.5855; M.S.A. § 27A.5855. That statute provides:

"If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations."

[3] ✓ As a general rule, for fraudulent concealment to postpone the running of the period of limitation, the fraud must be manifested by an affirmative act or misrepresentation. Draws v. Levin, 332 Mich. 447,

452, 52 N.W.2d 180 (1952); *695 Dowse v. Gaynor, 155 Mich. 38, 118 N.W. 615 (1908); Grebner v. Runyon, 132 Mich.App. 327, 347 N.W.2d 741 (1984); Buszek v. Harper Hospital, 116 Mich.App. 650, 323 N.W.2d 330 (1982). An exception to this rule is that there is an affirmative duty to disclose where the parties are in a fiduciary relationship. Barrett v. Breault, 275 Mich. 482, 267 N.W. 544 (1936); Tompkins v. Hollister, 60 Mich. 470, 27 N.W. 651 (1886). See also, Stetson v. French, 321 Mass. 195, 72 N.E.2d 410 (1947), cited with approval in International Union United Automobile Workers of America, AFL v. Wood, 337 Mich. 8, 59 N.W.2d 60 (1953).

[4] However, there does not appear to be a fiduciary relationship between plaintiff and defendant bank. The record indicates that the only transactions between plaintiff and the bank were the two bank money orders. The bank issued these money orders payable to both Beaman and plaintiff, not so much to look out for plaintiff's interest, but rather to look out for the bank's own interest in preventing the attachment of a mechanics lien to property over which the bank held the mortgage. Therefore, we conclude that the fiduciary relationship exception to the affirmative act requirement of fraudulent concealment does not apply to the instant case.

[5] Plaintiff cites Groening v. Opsata, 323 Mich. 73, 34 N.W.2d 560 (1948), for the proposition that there exists a duty to disclose when one party has superior knowledge. Plaintiff's reliance on Groening is misplaced. Groening involved a direct action based upon fraud in which the plaintiffs, purchasers of a parcel of land, made specific inquiries of one of the defendants, Mrs. Opsata, and one of the owners of the property being sold. In answering those questions, Mrs. Opsata either misrepresented the facts or was silent to material facts. Groening differs from the *696 case at bar in that a distinction is drawn between what will establish a direct action for fraud and what constitutes fraudulent concealment for the purposes of tolling the running of a statutory period of limitation. Dowse v. Gaynor, supra, 155 Mich. pp. 42-43, 118 N.W. 615; Draws v. Levin, supra, 332 Mich., pp. 452-453, 52 N.W.2d 180; McNaughton v. Rockford State Bank, 261 Mich. 265, 268, 246 N.W. 84 (1933).

A second distinction between Groening and the case at bar is that in Groening the plaintiffs had made specific inquiries of Mrs. Opsata and the defendants were advised that the plaintiffs were relying on the "superior knowledge, experience as a builder, and information of" Mr. Opsata. Groening, supra, 323 Mich. p. 82, 34 N.W.2d 560. In the instant case, plaintiff never made any inquiries of the bank, and **659 therefore did not rely upon the bank's superior knowledge. A third distinction is that in Groening there was a buyer-seller relationship between the parties, whereas in the instant case, the bank had no relationship at all with plaintiff. Furthermore, plaintiff fails to cite any authority for the proposition that a drawee bank has a duty to disclose to a payee that a negotiable instrument made payable to payee was paid over a forged endorsement.

III

It is plaintiff's claim that it would have brought its action within the three-year period of limitation had the bank disclosed to plaintiff the existence of the forged instrument, that the bank was in a uniquely superior position to know that the instrument had been forged, that special knowledge is a factor favoring the application of the doctrine of estoppel, and that, accordingly, the bank should be estopped from asserting the defense of the statute of limitations. The question of *697 whether a bank which has no direct dealings with a payee of a bank money order issued by the bank pursuant to a mortgage loan agreement with the bank's customer should be estopped from asserting the defense that the statutory limitation period has run in an action by the payee based upon the bank's payment of the money order over the payee's forged endorsement in Michigan.

[6] [✓] The criteria for application of the doctrine of estoppel are set forth in Cook v. Grand River Hydro Electric Power Co., 131 Mich.App. 821, 828, 346 N.W.2d 881 (1984).

"An estoppel arises where: (1) a party by representation, admissions or silence, intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on this belief; and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts * * *."

Special knowledge of a defendant may be a consideration in applying estoppel. Bohlinger v. DAILE, 120 Mich.App. 269, 327 N.W.2d 466 (1982). However, special knowledge is just one of many other factors enumerated by the Bohlinger Court, viz: concealment of a cause of action, misrepresentation as to the statutory time in which an action may be brought, inducement not to bring the action, a promise to pay or settle the claim, and a fiduciary relationship. None of these other factors are present in the instant case.

Also missing in the instant case is the element of false representation. In Lothian v. Detroit, 414 Mich. 160, 176-177, 324 N.W.2d 9 (1982), Chief Justice Coleman, writing for a unanimous Court which held that a party seeking to invoke the doctrine of estoppel must establish a false representation*698 or a concealment of a material fact, stated:

"The doctrine of equitable estoppel, a judicially fashioned exception to the general rule which provides that statutes of limitation run without interruption, see Klass [v Detroit, 129 Mich 35, 39; 88 NW 204 (1901)], 'is essentially a doctrine of waiver' which 'serves to extend the applicable statute of limitations-by precluding the defendant from raising the bar of the statute', Huhtala v Travelers Ins Co, 401 Mich 118, 132-133; 257 NW2d 640 (1977). Equitable estoppel may be introduced to counter a statute of limitations defense so as 'to accomplish the prevention of results contrary to good conscience and fair dealing', McLearn v Hill, 276 Mass 519, 524; 177 NE 617 (1931). Generally, to justify the application of estoppel, one must establish that there has been a false representation or concealment of material fact, coupled with an expectation that the other party will rely upon this conduct, and knowledge of the actual facts on the part of the representing or concealing party. See 28 Am Jur 2d, Estoppel and Waiver, § 35, p 640." 414 Mich. 176-177, 324 N.W.2d 9.

In the instant case, the bank made no representations to plaintiff. Nothing in the record suggests that the bank induced plaintiff to believe certain facts. Indeed, **660 the bank had no dealings at all with plaintiff.

[7] [✓] [8] [✓] Except for silence, there is nothing in the record showing the bank concealed any material fact from plaintiff. While silence or inaction, *in certain situations*, may invoke the doctrine of estoppel, silence does not invoke the doctrine unless the party remaining silent has a duty or obligation to disclose.

"That concealment of material facts *that one under the circumstances is bound to disclose* may constitute actionable fraud is not open to question. *699 Busch v Wilcox, 82 Mich 315; 46 NW 940 (1890); Prudential Insurance Company of America v Ashe, 266 Mich 667; 254 NW 243 (1934); Wolfe v A E Kusterer & Co, 269 Mich 424; 257 NW 729 (1934)." Groening, supra, 323 Mich. p. 83, 34 N.W.2d 560.

Unless there has been some fiduciary relationship or other direct dealings between the parties, mere silence is not enough to overcome the applicable period of limitation.

"Fraudulent concealment is more than mere silence. McNaughton v Rockford State Bank, 261 Mich 265, 268; 246 NW 84 (1933). See, also, Schram v Burt, 111 F2d 557 (CA 6, 1940). No fiduciary relationship existed between the Union and Wood, as was alleged and denied in Dowse v Gaynor, 155 Mich 38, 42; 118 NW 615 (1908). See also, Stetson v French, 321 Mass 195; 72 NE2d 410; 173 ALR 569

(1947), and authorities annotated beginning on page 578." International Union United Automobile Works of America, AFL v. Wood, 337 Mich. 8, 13-14, 59 N.W.2d 60 (1953).

Finally, we note that plaintiff cites Nowicki v. Podgorski, 359 Mich. 18, 32, 101 N.W.2d 371 (1960), for the proposition that silence should toll the statute of limitations in the instant case. However, that case involved direct dealings between the plaintiff, as purchaser, and defendants, as sellers of a grocery store. In Nowicki, defendant wife remained silent when her husband made false statements as to the volume of sales per week and as to the fact that the fixtures were in good shape. Obviously, there was a duty to speak up in that case.

IV

Lastly, plaintiff argues that an action for silent fraud is recognized in Michigan, *700 United States Fidelity & Guaranty Co. v. Black, 412 Mich. 99, 313 N.W.2d 77 (1981), and that its complaint states a claim for silent fraud. In so doing, plaintiff concedes that for suppression of information to constitute silent fraud there must be a legal or equitable duty to disclose. The bank argues that plaintiff's complaint fails to state a claim for silent fraud, and even if it does, the bank owed no duty, either legal or equitable, to disclose the existence of the instruments to the plaintiff. We agree with the bank.

[9] The complaint does not specifically plead a cause of action in fraud. Assuming, *arguendo*, that an action in fraud has been sufficiently pled, for the reasons set forth in issues II and III of this opinion, we find that the bank had no duty to disclose to plaintiff the fact that the money orders had been paid over a forged endorsement. Consequently, plaintiff would not be able to prevail upon a silent fraud claim.

[10] [11] In addition to the duty to disclose, silent fraud requires a plaintiff to establish reliance. Emerick v. Saginaw Twp., 104 Mich.App. 243, 247, 304 N.W.2d 536 (1981). Despite plaintiff's allegations to the contrary, we fail to see how plaintiff realistically relied on the bank's silence in the instant case. As was so aptly stated in the trial court's opinion:

"If, as alleged in this case, the plaintiff was not aware of the checks until four years after their issuance, there is no way that plaintiff could have relied upon the issuance of the check to its detriment in any way."

For these reasons, we affirm the trial court's dismissal of plaintiff's complaint against defendant bank with respect to silent fraud.

****661** In conclusion, having found that none of the ***701** issues raised by plaintiff establish error on the part of the trial court, the trial court's order for accelerated judgment in favor of the bank is affirmed. Costs to the bank.

Mich.App., 1984.
Lumber Village, Inc. v. Siegler
135 Mich.App. 685, 355 N.W.2d 654

END OF DOCUMENT

Exhibit - 24

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>		
Estimated Loss by Plaintiff for actual work performed...July 1983 - July 1984	\$	7,560.00
Estimated Loss by Plaintiff for actual work performed...July 1984 - July 1985	\$	50,085.63
Estimated Loss by Plaintiff for actual work performed...July 1985 - July 1986	\$	79,219.84
Estimated Loss by Plaintiff for actual work performed...July 1986 - July 1987	\$	103,245.62
Estimated Loss by Plaintiff for actual work performed...July 1987 - July 1988	\$	141,964.45
Estimated Loss by Plaintiff for actual work performed...July 1988 - July 1989	\$	273,865.26
Estimated Loss by Plaintiff for actual work performed...July 1989 - July 1990	\$	315,634.02
Estimated Loss by Plaintiff for actual work performed...July 1990 - July 1991	\$	327,010.25
Estimated Loss by Plaintiff for actual work performed...July 1991 - July 1992	\$	339,964.83
Estimated Loss by Plaintiff for actual work performed...July 1992 - July 1993	\$	359,206.21
Estimated Loss by Plaintiff for actual work performed...July 1993 - July 1994	\$	380,832.81
Estimated Loss by Plaintiff for actual work performed...July 1994 - July 1995	\$	396,677.34
Total Estimated Loss by Plaintiff	\$	2,775,266.26

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>										
July 1983 - July 1984										
Accomplishments	<p>Four to five times General Motors specifically requested the plaintiff to work for General Motors.</p> <ul style="list-style-type: none"> - General Motors had first hand experience of the plaintiff's skills. - General Motors Summer Temporary Student Appraisal - overall job rating of "Outstanding performance" - See Exhibit 14 <p>Humidity Monitoring to help diagnose problem with large printer - See Exhibit 16, Item 6</p> <p>Forty-Seven mm diesel particulate filter sampling system - See Exhibit 16, Item 7</p> <p>Sartorius Microbalance - See Exhibit 16, Item 8</p> <p>Tylan Mass Flow Controllers - See Exhibit 16, Item 9</p>									
Plaintiff Viewpoint	<table border="0" style="width: 100%;"> <tr> <td style="width: 80%;">6E11 Project Engineer</td> <td align="right">\$</td> <td align="right">35,560.00</td> </tr> <tr> <td colspan="3">- Average promotion increase (from 5E35 * 1.27)</td> </tr> </table>	6E11 Project Engineer	\$	35,560.00	- Average promotion increase (from 5E35 * 1.27)					
6E11 Project Engineer	\$	35,560.00								
- Average promotion increase (from 5E35 * 1.27)										
General Motors Position	<table border="0" style="width: 100%;"> <tr> <td style="width: 80%;">5E35 Associate Engineer</td> <td align="right">\$</td> <td align="right">28,000.00</td> </tr> <tr> <td colspan="3">- Plaintiff starting yearly compensation (salary + COLA)</td> </tr> <tr> <td align="right" colspan="2">Estimated Loss by Plaintiff</td> <td align="right">\$ 7,560.00</td> </tr> </table>	5E35 Associate Engineer	\$	28,000.00	- Plaintiff starting yearly compensation (salary + COLA)			Estimated Loss by Plaintiff		\$ 7,560.00
5E35 Associate Engineer	\$	28,000.00								
- Plaintiff starting yearly compensation (salary + COLA)										
Estimated Loss by Plaintiff		\$ 7,560.00								

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>	
July 1984 - July 1985	
Accomplishments	Sample Conditioning Unit - See Exhibit 16, Item 10 Horiba Chassis Dynamometer Controller - See Exhibit 16, Item 11 Overhead Track System - See Exhibit 16, Item 12 Emission Wing Renovation – Design Coordination - See Exhibit 16, Item 13
Plaintiff Viewpoint	7th Level Project Manager \$ 45,040.24 6E11 Electrical Engineer \$ 35,464.75
General Motors Position	5E35 Associate Engineer \$ 30,419.36 - Plaintiff's yearly compensation 10/16/1984 (salary + COLA)
	Estimated Loss by Plaintiff \$ 50,085.63

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>			
July 1985 - July 1986			
Accomplishments	Instrumentation Console and Custom Enclosure - See Exhibit 16, Item 15 Emission Test Site Instrumentation Patch Panel- See Exhibit 16, Item 16 12-Channel Strip Chart Recorder and Custom Enclosure - See Exhibit 16, Item 17 Dew Point Meter and Ambient Temperature Sensor and Custom Enclosure - See Exhibit 16, Item 18 Instrumentation Interfacing - See Exhibit 16, Item 19		
Plaintiff Viewpoint	7th Level Project Manager	\$	43,830.61
	7E06 Sr. Electrical Engineer	\$	43,830.61
	6th Level Technical Designer	\$	25,884.22
General Motors Position	6E11 Project Engineer on Sept. 01, 1985	\$	34,325.60
	Estimated Loss by Plaintiff	\$	79,219.84

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>										
July 1986 - July 1987										
Accomplishments	Emissions Wing Renovation – Project Management - See Exhibit 16, Item 14 Programmable Logic Controllers – integrated into Emissions Analysis Systems - See Exhibit 16, Item 20 Large Temperature and Humidity Display - See Exhibit 16, Item 21 Honeywell HVAC Central Control Station - See Exhibit 16, Item 22 Smoke Detector Graphics Display Panel - See Exhibit 16, Item 23 Overhead Door Logic Controls - See Exhibit 16, Item 24 Software Programming Skills and Software Program Management - See Exhibit 16, Item 25									
Plaintiff Viewpoint	<table border="0"> <tr> <td>8th Level Project Manager</td> <td align="right">\$</td> <td align="right">62,449.59</td> </tr> <tr> <td>7E06 Sr Electrical Engineer</td> <td align="right">\$</td> <td align="right">49,172.91</td> </tr> <tr> <td>6th Level Technical Designer</td> <td align="right">\$</td> <td align="right">29,039.12</td> </tr> </table>	8th Level Project Manager	\$	62,449.59	7E06 Sr Electrical Engineer	\$	49,172.91	6th Level Technical Designer	\$	29,039.12
8th Level Project Manager	\$	62,449.59								
7E06 Sr Electrical Engineer	\$	49,172.91								
6th Level Technical Designer	\$	29,039.12								
General Motors Position	<table border="0"> <tr> <td>6E11 Project Engineer</td> <td align="right">\$</td> <td align="right">37,416.00</td> </tr> <tr> <td align="right" colspan="2">Estimated Loss by Plaintiff</td> <td align="right">\$ 103,245.62</td> </tr> </table>	6E11 Project Engineer	\$	37,416.00	Estimated Loss by Plaintiff		\$ 103,245.62			
6E11 Project Engineer	\$	37,416.00								
Estimated Loss by Plaintiff		\$ 103,245.62								

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>	
July 1987 - July 1988	
Accomplishments	Fuel Meter Calibration Cart - See Exhibit 16, Item 26 Fuel Injector Test Stand Renovation - See Exhibit 16, Item 27 Elimination of Dynamometer Shimming - See Exhibit 16, Item 28
Plaintiff Viewpoint	8th Level Project Manager \$ 62,449.59 7E06 Sr. Electrical Engineer \$ 49,172.91 6E11 Mechanical Engineer \$ 38,718.83 6th Level Technical Designer \$ 29,039.12
General Motors Position	6E11 Project Engineer \$ 37,416.00
	Estimated Loss by Plaintiff \$ 141,964.45

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>		
July 1988 - July 1989		
Accomplishments	Engine Coolant and Engine Oil Process Control - See Exhibit 16, Item 29 DSP Combustion Analysis System - See Exhibit 16, Item 30 Druck Pressure Transducers - See Exhibit 16, Item 32 New Programmable Logic Controller (PLC) - See Exhibit 16, Item 33 New CPI Front-end Equipment - See Exhibit 16, Item 34 AutoCAD Drawings - See Exhibit 16, Item 35 New Instrumentation Booms - See Exhibit 16, Item 36 Humidity and Ambient Temperature Sensor per Test Cell - See Exhibit 16, Item 37	
Plaintiff Viewpoint		9th Level Project Manager \$ 76,742.64 7E06 Sr. Electrical Engineer \$ 47,580.53 6E11 Instrumentation Engineer \$ 37,464.99 6E11 Mechanical Engineer \$ 37,464.99 6E11 Process Controls Engineer \$ 37,464.99 6th Level AutoCAD Designer \$ 25,850.84 6th Level Technical Designer \$ 28,098.74 6th Level Technical Secretary \$ 25,101.54
General Motors Position	7E06 Sr. Project Engineer on May 1, 1988	\$ 41,904.00
	Estimated Loss by Plaintiff	\$ 273,865.26

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>			
July 1989 - July 1990			
Accomplishments	Dynamometer Test Cell #13 Renovation - See Exhibit 16, Item 38 Dynamometer Test Cell #03 Renovation - See Exhibit 16, Item 39		
Plaintiff Viewpoint	9th Level Project Manager	\$	80,465.65
	7E06 Sr. Electrical Engineer	\$	49,888.80
	6E11 Instrumentation Engineer	\$	39,282.52
	6E11 Mechanical Engineer	\$	39,282.52
	6E11 Process Controls Engineer	\$	39,282.52
	6th Level AutoCAD Designer	\$	27,104.94
	6th Level Technical Designer	\$	29,461.89
	6th Level Technical Secretary	\$	26,319.29
	6th Level Technician for Test Cell Start-up	\$	29,461.89
General Motors Position	7E06 Sr Project Engineer	\$	44,916.00
	Estimated Loss by Plaintiff	\$	315,634.02

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>																												
July 1990 - July 1991																												
Accomplishments	Natural Gas Compressor - See Exhibit 16, Item 40 Dynamometer Vault Spray Renovation - See Exhibit 16, Item 41 Designed a Custom Pulse Circuit Board - See Exhibit 16, Item 42 PSI High Speed and High Channel Count Pressure Measurement System - See Exhibit 16, Item 43 Chassis Dyno Renovation - See Exhibit 16, Item 44																											
Plaintiff Viewpoint	<table border="0"> <tr> <td>9th Level Project Manager</td> <td align="right">\$</td> <td align="right">83,687.45</td> </tr> <tr> <td>7E06 Sr. Electrical Engineer</td> <td align="right">\$</td> <td align="right">51,886.32</td> </tr> <tr> <td>6E11 Instrumentation Engineer</td> <td align="right">\$</td> <td align="right">40,855.37</td> </tr> <tr> <td>6E11 Mechanical Engineer</td> <td align="right">\$</td> <td align="right">40,855.37</td> </tr> <tr> <td>6E11 Process Controls Engineer</td> <td align="right">\$</td> <td align="right">40,855.37</td> </tr> <tr> <td>6th Level AutoCAD Designer</td> <td align="right">\$</td> <td align="right">28,190.21</td> </tr> <tr> <td>6th Level Technical Designer</td> <td align="right">\$</td> <td align="right">30,641.53</td> </tr> <tr> <td>6th Level Technical Secretary</td> <td align="right">\$</td> <td align="right">27,373.10</td> </tr> <tr> <td>6th Level Technician for Test Cell Start-up</td> <td align="right">\$</td> <td align="right">30,641.53</td> </tr> </table>	9th Level Project Manager	\$	83,687.45	7E06 Sr. Electrical Engineer	\$	51,886.32	6E11 Instrumentation Engineer	\$	40,855.37	6E11 Mechanical Engineer	\$	40,855.37	6E11 Process Controls Engineer	\$	40,855.37	6th Level AutoCAD Designer	\$	28,190.21	6th Level Technical Designer	\$	30,641.53	6th Level Technical Secretary	\$	27,373.10	6th Level Technician for Test Cell Start-up	\$	30,641.53
9th Level Project Manager	\$	83,687.45																										
7E06 Sr. Electrical Engineer	\$	51,886.32																										
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6th Level AutoCAD Designer	\$	28,190.21																										
6th Level Technical Designer	\$	30,641.53																										
6th Level Technical Secretary	\$	27,373.10																										
6th Level Technician for Test Cell Start-up	\$	30,641.53																										
General Motors Position	<table border="0"> <tr> <td>7E06 Sr. Project Engineer</td> <td align="right">\$</td> <td align="right">47,976.00</td> </tr> <tr> <td align="right" colspan="2">Estimated Loss by Plaintiff</td> <td align="right">\$ 327,010.25</td> </tr> </table>	7E06 Sr. Project Engineer	\$	47,976.00	Estimated Loss by Plaintiff		\$ 327,010.25																					
7E06 Sr. Project Engineer	\$	47,976.00																										
Estimated Loss by Plaintiff		\$ 327,010.25																										

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

Year		
July 1991 - July 1992		
Accomplishments	Dynamometer Test Cell #07 Renovation - New Hemi-anechoic Chamber - See Exhibit 16, Item 45 Dynamometer Test Cell #06 Renovation - See Exhibit 16, Item 46 New Exhaust Fans - See Exhibit 16, Item 47 New Dynamometer Wing Ground Wire - See Exhibit 16, Item 49	
Plaintiff Viewpoint		
	9th Level Project Manager	\$ 87,655.18
	7E06 Sr. Electrical Engineer	\$ 54,346.32
	6E11 Instrumentation Engineer	\$ 42,792.38
	6E11 Mechanical Engineer	\$ 42,792.38
	6E11 Process Controls Engineer	\$ 42,792.38
	6th Level AutoCAD Designer	\$ 29,526.74
	6th Level Technical Designer	\$ 32,094.28
	6th Level Technical Secretary	\$ 28,670.89
	6th Level Technician for Test Cell Start-up	\$ 32,094.28
General Motors Position	7E06 Sr. Project Engineer	\$ 52,800.00
	Estimated Loss by Plaintiff	\$ 339,964.83

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>		
July 1992 - July 1993	At this time the plaintiff is General Motors best Powertrain Test Cell renovation person	
Accomplishments	Dynamometer Test Cell #11 Renovation - See Exhibit 16, Item 50 Modicon Panelmate 2000 Video Based Man-Machine Interface - See Exhibit 16, Item 51 Dynamometer Test Cell #21 Outside Anechoic Chamber - See Exhibit 16, Item 53 Dynamometer Test Cell #15 Renovation - See Exhibit 16, Item 54 New Motor Control Centers - See Exhibit 16, Item 55	
Plaintiff Viewpoint		
	9th Level Project Manager - Maximum Salary	\$ 106,896.56
	7E06 Sr Electrical Engineer	\$ 54,346.32
	6E11 Instrumentation Engineer	\$ 42,792.38
	6E11 Mechanical Engineer	\$ 42,792.38
	6E11 Process Controls Engineer	\$ 42,792.38
	6th Level AutoCAD Designer	\$ 29,526.74
	6th Level Technical Designer	\$ 32,094.28
	6th Level Technical Secretary	\$ 28,670.89
	6th Level Technician for Test Cell Start-up	\$ 32,094.28
General Motors Position	7E06 Sr. Project Engineer	\$ 52,800.00
	Estimated Loss by Plaintiff	\$ 359,206.21

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

Year		
July 1993 - July 1994		
Accomplishments	Dynamometer Test Cell #08 Renovation - See Exhibit 16, Item 56 Dynamometer Test Cell Ventilation System converted to 24/7 operation - See Exhibit 16, Item 57	
Plaintiff Viewpoint	9th Level Project Manager - Maximum Salary	\$ 113,709.45
	7E06 Sr. Electrical Engineer	\$ 57,810.00
	6E11 Instrumentation Engineer	\$ 45,519.69
	6E11 Mechanical Engineer	\$ 45,519.69
	6E11 Process Controls Engineer	\$ 45,519.69
	6th Level AutoCAD Designer	\$ 31,408.58
	6th Level Technical Designer	\$ 34,139.76
	6th Level Technical Secretary	\$ 30,498.19
	6th Level Technician for Test Cell Start-up	\$ 34,139.76
General Motors Position	7E06 Sr. Project Engineer	\$ 57,432.00
	Estimated Loss by Plaintiff	\$ 380,832.81

Stasko v General Motors Corporation: Estimated Loss by Plaintiff

<u>Year</u>			
July 1994 - July 1995			
Accomplishments	Replacement of (4) Aux. Temperature Safety Meters with Modicon Analog Input - See Exhibit 16, Item 58 Conditioned Air Systems - See Exhibit 16, Item 59		
Plaintiff Viewpoint	9th Level Project Manager - Maximum Salary	\$	118,838.47
	7E06 Sr Electrical Engineer	\$	60,417.60
	6E11 Instrumentation Engineer	\$	47,572.91
	6E11 Mechanical Engineer	\$	47,572.91
	6E11 Process Controls Engineer	\$	47,572.91
	6th Level AutoCAD Designer	\$	32,825.31
	6th Level Technical Designer	\$	35,679.69
	6th Level Technical Secretary	\$	31,873.85
	6th Level Technician for Test Cell Start-up	\$	35,679.69
General Motors Position	7E06 Sr Project Engineer	\$	61,356.00
	Estimated Loss by Plaintiff	\$	396,677.34

Exhibit - 25

Estimating CY1983 to CY1995 Salary Compensation of other Occupations from General Motors' Salary Data

CY Estimates (Date)	5E35 Engineer	6E11 Engineer	6E11 Engineer	7E06 Engineer	7E06 Engineer	7th Level Proj. Mgr	7th Level Proj. Mgr	6th Level Tech
	Salary Maximum	Salary Maximum	Salary Midpoint	Salary Maximum	Salary Midpoint	Salary Maximum	Salary Midpoint	Salary Midpoint
07/1984 to 07/1985 - October 16, 1984	\$ 34,054.88	\$ 43,249.70	\$ 35,464.75			\$ 54,927.12	\$ 45,040.24	
07/1985 to 07/1986 - September 1, 1985		\$ 42,088.16	\$ 34,512.29	\$ 53,451.96	\$ 43,830.61	\$ 53,451.96	\$ 43,830.61	\$ 25,884.22

CY Estimates (Date)	6E11 Engineer	6E11 Engineer	7E06 Engineer	7E06 Engineer	8th Level Proj. Mgr	8th Level Proj. Mgr	6th Level Tech
	Salary Maximum	Salary Midpoint	Salary Maximum	Salary Midpoint	Salary Maximum	Salary Midpoint	Salary Midpoint
07/1986 to 07/1987 - March 1, 1986	\$ 47,218.08	\$ 38,718.83	\$ 59,966.96	\$ 49,172.91	\$ 76,158.04	\$ 62,449.59	\$ 29,039.12
07/1987 to 07/1988 - March 1, 1986	\$ 47,218.08	\$ 38,718.83	\$ 59,966.96	\$ 49,172.91	\$ 76,158.04	\$ 62,449.59	\$ 29,039.12

CY Estimates (Date)	7E06 Engineer	6E11 Engineer	6E11 Engineer	7E06 Engineer	7E06 Engineer	9th Level Proj. Mgr	9th Level Proj. Mgr	6th Level Tech	6th Level CAD	6th Level Secretary
	Salary Maximum	Salary Maximum	Salary Midpoint	Salary Maximum	Salary Midpoint	Salary Maximum	Salary Midpoint	Salary Midpoint	Salary Midpoint	Salary Midpoint
07/1988 to 07/1989 - May 1, 1988	\$ 58,025.04	\$ 45,689.01	\$ 37,464.99	\$ 58,025.04	\$ 47,580.53	\$ 93,588.59	\$ 76,742.64	\$ 28,098.74	\$ 25,850.84	\$ 25,101.54
07/1989 to 07/1990 - May 1, 1989	\$ 60,840.00	\$ 47,905.51	\$ 39,282.52	\$ 60,840.00	\$ 49,888.80	\$ 98,128.84	\$ 80,465.65	\$ 29,461.89	\$ 27,104.94	\$ 26,319.29
07/1990 to 07/1991 - September 1, 1990	\$ 63,276.00	\$ 49,823.62	\$ 40,855.37	\$ 63,276.00	\$ 51,886.32	\$ 102,057.86	\$ 83,687.45	\$ 30,641.53	\$ 28,190.21	\$ 27,373.10
07/1991 to 07/1992 - September 1, 1991	\$ 66,276.00	\$ 52,185.83	\$ 42,792.38	\$ 66,276.00	\$ 54,346.32	\$ 106,896.56	\$ 87,655.18	\$ 32,094.28	\$ 29,526.74	\$ 28,670.89
07/1992 to 07/1993 - September 1, 1991	\$ 66,276.00	\$ 52,185.83	\$ 42,792.38	\$ 66,276.00	\$ 54,346.32	\$ 106,896.56	\$ 87,655.18	\$ 32,094.28	\$ 29,526.74	\$ 28,670.89
07/1993 to 07/1994 - October 1, 1993	\$ 70,500.00	\$ 55,511.81	\$ 45,519.69	\$ 70,500.00	\$ 57,810.00	\$ 113,709.45	\$ 93,241.75	\$ 34,139.76	\$ 31,408.58	\$ 30,498.19
07/1994 to 07/1995 - June 1, 1994	\$ 73,680.00	\$ 58,015.75	\$ 47,572.91	\$ 73,680.00	\$ 60,417.60	\$ 118,838.47	\$ 97,447.55	\$ 35,679.69	\$ 32,825.31	\$ 31,873.65

Estimating Promotion Level Pay Increases

Date	Position Code	Monthly Salary	Yearly Salary	Quarterly COLA	Yearly COLA	Total Yearly Compensation	Promotion Increase
October 16, 1984	5E35 - Minimum Salary	\$ 1,306.00	\$ 15,672.00	\$ 26.00	\$ 104.00	\$ 15,776.00	
September 1, 1985	6E11 - Minimum Salary	\$ 1,679.00	\$ 20,148.00	\$ 244.40	\$ 977.60	\$ 21,125.60	34%
October 16, 1984	5E35 - Maximum Salary	\$ 2,829.24	\$ 33,950.88	\$ 26.00	\$ 104.00	\$ 34,054.88	
September 1, 1985	6E11 - Maximum Salary	\$ 3,425.88	\$ 41,110.56	\$ 244.40	\$ 977.60	\$ 42,088.16	24%
March 1, 1986	6E11 - Minimum Salary	\$ 1,679.00	\$ 20,148.00	\$ -	\$ -	\$ 20,148.00	
May 1, 1988	7E06 - Minimum Salary	\$ 2,110.50	\$ 25,326.00	\$ -	\$ -	\$ 25,326.00	26%
March 1, 1986	6E11 - Maximum Salary	\$ 3,934.84	\$ 47,218.08	\$ -	\$ -	\$ 47,218.08	
May 1, 1988	7E06 - Maximum Salary	\$ 4,835.42	\$ 58,025.04	\$ -	\$ -	\$ 58,025.04	23%
Average Promotion Increase							27%

Estimating Midpoint Salary Compensation from Maximum Salary Data

Date	Position Code	Yearly Salary	Midpoint Percentage of Maximum
March 1, 1986	6E11 - Midpoint Salary	\$ 39,870.96	84%
March 1, 1986	6E11 - Maximum Salary	\$ 47,218.08	
May 1, 1988	7E06 - Midpoint Salary	\$ 45,300.00	78%
May 1, 1988	7E06 - Maximum Salary	\$ 58,025.04	
September 1, 1990	7E06 - Midpoint Salary	\$ 52,800.00	83%
September 1, 1990	7E06 - Maximum Salary	\$ 63,276.00	
September 1, 1991	7E06 - Midpoint Salary	\$ 55,368.00	84%
September 1, 1991	7E06 - Maximum Salary	\$ 66,276.00	
October 1, 1993	7E06 - Midpoint Salary	\$ 58,200.00	83%
October 1, 1993	7E06 - Maximum Salary	\$ 70,500.00	
June 1, 1994	7E06 - Midpoint Salary	\$ 59,940.00	81%
June 1, 1994	7E06 - Maximum Salary	\$ 73,680.00	
Midpoint Salary as a Percentage of Maximum Salary - Average			82%

Estimating Midpoint Salary Compensation of other Occupations from Midpoint Engineering Salary Data

Position Code	Monthly Salary Beginner - Min	Monthly Salary Beginner - Max	Monthly Salary Intermediate - Min	Monthly Salary Intermediate - Max	Monthly Salary Senior - Min	Monthly Salary Senior - Max	Avg Monthly Salary	Promotion Increase
Electrical Engineer	\$ 2,130.00	\$ 3,066.00	\$ 2,910.00	\$ 3,897.00	\$ 3,533.00	\$ 5,179.00	\$ 3,452.50	
Electrical Laboratory Tech	\$ 1,871.00	\$ 2,468.00	\$ 2,143.00	\$ 3,031.00	\$ 2,591.00	\$ 3,365.00	\$ 2,578.17	75%
Electrical Engineer	\$ 2,130.00	\$ 3,066.00	\$ 2,910.00	\$ 3,897.00	\$ 3,533.00	\$ 5,179.00	\$ 3,452.50	
CAD Drafter	\$ 1,282.00	\$ 2,295.00	\$ 1,948.00	\$ 2,875.00	\$ 2,442.00	\$ 3,455.00	\$ 2,382.83	69%
Electrical Engineer	\$ 2,130.00	\$ 3,066.00	\$ 2,910.00	\$ 3,897.00	\$ 3,533.00	\$ 5,179.00	\$ 3,452.50	
Secretaries	\$ 1,186.00	\$ 2,104.00	\$ 1,749.00	\$ 2,944.00	\$ 2,226.00	\$ 3,722.00	\$ 2,321.83	67%

Occupational Wage Information - Michigan - June 1996
 Michigan Employment Security Commission

Exhibit - 26



Occupational Wage Information

MICHIGAN

June 1996

Michigan Employment
Security Commission

For Further Information Contact:
Occupational Employment Statistics
7310 Woodward Avenue
Detroit, Michigan 48202
(313) 876-5372

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT
SECURITY COMMISSION

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Cost: \$5,413.65/may
Paid for with Federal funds

MONTHLY RATES
FOR
SELECTED OCCUPATIONS
MICHIGAN

OCCUPATION TITLE	BEGINNING		INTERMEDIATE		SENIOR		DATA SOURCE
	MIN	MAX	MIN	MAX	MIN	MAX	
BOOK COVER DESIGNER	\$1510	\$2324	\$2241	\$3166	\$2868	\$4219	PU
SUPERVISORY					4003	5348	PU
ADMINISTRATIVE					4760	6008	PU
BOTANIST	2165	3022	2304	3577	3118	4252	CS
SUPERVISORY					3343	4598	CS
ADMINISTRATIVE					3888	6538	CS
BUDGET ANALYSTS	--	--	2312	3403	2825	3880	CFP
SUPERVISORY					3403	4313	CFP
ADMINISTRATIVE					3880	5614	CFP
BUILDING INSPECTOR	1808	2806	2529	3360	3118	4780	CS
BUILDING-ILLUMINATING ENGINEER	2130	3066	2910	3897	3533	5179	CPS
SUPERVISORY					4088	5515	CPS
BURSAR	1888	2892	2511	3392	2840	3888	CFPSU
SUPERVISORY					3222	4605	CFPSU
ADMINISTRATIVE					3620	6417	CFPSU
BUSINESS AND FINANCIAL COUNSEL	2042	3629	3447	5212	4486	6276	CFS
SUPERVISORY					5502	7805	CFS
ADMINISTRATIVE					6212	8747	CFS
BUSINESS PROGRAMMER	1871	2806	2425	3637	2910	3888	CFPS
SUPERVISORY					3525	5412	CFPS
BUSINESS REPRESENTATIVE	1879	2832	2624	3334	2866	3854	CFPS
SUPERVISORY					3429	4760	CFPS
ADMINISTRATIVE					3819	6885	CFPS
BUYER, X FARM PRODUCTS	1871	2866	2412	3429	2866	3758	CFPS
SUPERVISORY					3343	4373	CFPS
ADMINISTRATIVE					3992	5594	CFPS
CABLE ENGINEER	2130	3066	2910	3897	3533	5179	CPS
SUPERVISORY					4088	5515	CPS
CAD DRAFTER	1282	2295	1948	2875	2442	3455	CFPSU
SUPERVISORY					2814	4122	CFPSU
CALIBRATION LABORATORY TECH	1871	2468	2143	3031	2591	3365	CPS
SUPERVISORY					3144	3464	CPS

MONTHLY RATES
FOR
SELECTED OCCUPATIONS
MICHIGAN

OCCUPATION TITLE	BEGINNING		INTERMEDIATE		SENIOR		DATA SOURCE
	MIN	MAX	MIN	MAX	MIN	MAX	
DIETICIAN	\$2087	\$2848	\$2381	\$3083	\$2882	\$3914	CS
SUPERVISORY					3343	4304	CS
DIETICIAN, TEACHING	2087	2848	2381	3083	2882	3914	CS
SUPERVISORY					3343	4304	CS
DIETICIAN, THERAPIUTIC	2087	2848	2381	3083	2882	3914	CS
SUPERVISORY					3343	4304	CS
DIETICIAN/NUTRITIONIST	2087	2848	2381	3083	2882	3914	CS
SUPERVISORY					3343	4304	CS
DISTRIBUTION FIELD ENGINEER	2130	3066	2910	3897	3533	5179	CPS
SUPERVISORY					4088	5515	CPS
DOCTOR OF NUCLEAR MEDICINE	2693	7663	5860	9223	7762	9999+	CS
DRAFTER, ELECTRICAL	1282	2295	1948	2875	2442	3455	CFPSU
SUPERVISORY					2814	4122	CFPSU
DRAFTER, ELECTRONIC	1282	2295	1948	2875	2442	3455	CFPSU
SUPERVISORY					2814	4122	CFPSU
DRAFTERS	1282	2295	1948	2875	2442	3455	CFPSU
SUPERVISORY					2814	4122	CFPSU
DRUG ADDICTION COUNSELOR	2217	2489	2356	3335	2463	3706	CS
DRUGGIST	2304	3057	2728	3646	2910	3975	CS
SUPERVISORY					3646	4607	CS
ECONOMISTS	2200	2866	2477	3706	3178	4053	S
SUPERVISORY					3568	4949	S
EDUCATION COUNSELOR	--	--	1897	2693	2634	4088	CS
SUPERVISORY					3178	4521	CS
EEG TECHNICIAN	--	--	1951	2451	--	--	S
ELECTRICAL DESIGN ENGINEER	2130	3066	2910	3897	3533	5179	CPS
SUPERVISORY					4088	5515	CPS
ELECTRICAL ENG TECHNOLOGIST	1871	2468	2143	3031	2591	3365	CPS
SUPERVISORY					3144	3464	CPS
ELECTRICAL ENGINEER *	2130	3066	2910	3897	3533	5179	CPS
SUPERVISORY					4088	5515	CPS
ELECTRICAL LABORATORY TECH *	1871	2468	2143	3031	2591	3365	CPS
SUPERVISORY					3144	3464	CPS

MONTHLY RATES
FOR
SELECTED OCCUPATIONS
MICHIGAN

OCCUPATION TITLE	BEGINNING		INTERMEDIATE		SENIOR		DATA SOURCE
	MIN	MAX	MIN	MAX	MIN	MAX	
SALES RECORD CLERK	\$1749	\$2200	\$1992	\$2546	\$2122	\$2988	CS
SALES REP-EXCEPT SCI & RETAIL SUPERVISORY	--	--	2009	2970	2363	3328	CP
SALES REPRESENTATIVE SUPV	1871	2455	2364	3438	3230	3992	CP
SCHEDULE MAKER	1687	2246	2055	2652	2404	3386	CFPU
SCHEDULER AND PLANNER SUPERVISORY	1230	1733	1434	2321	2130	2712	C
SECRETARIES * SUPERVISORY	1186	2104	1749	2944	2226	3722	CFPSU
SHIPPING CLERK SUPERVISORY	1282	1905	1819	2412	2122	3187	CFPU
SHIPPING/RECEIVING CLERK SUPERVISORY	1282	1905	1819	2412	2122	3187	CFPU
STACK CLERK	--	--	1360	2191	1974	2650	C
STATION HOUSE CLERK SUPERVISORY	1351	1871	1645	2165	2085	2884	CP
STATISTICAL CLERKS	1749	2200	1992	2546	2122	2988	CS
STENOGRAPHER	1332	2210	1708	2736	2252	3176	CS
STENOTYPE OPERATOR	1332	2210	1708	2736	2252	3176	CS
STOCK CLERK, STOCKROOM, WAREHOUS SUPERVISORY	1126	1950	1686	2347	2088	3144	CPSU
STOCKROOM CLERK SUPERVISORY	1126	1950	1686	2347	2088	3144	CPSU
STOCKROOM INVENTORY CLERK SUPERVISORY	1126	1950	1686	2347	2088	3144	CPSU
STORE CASHIER	736	1862	1690	2451	2113	3100	CFPU
STOREKEEPER SUPERVISORY	1126	1950	1686	2347	2088	3144	CPSU
SUBSCRIPTION ORDER CLERK	1212	1741	1567	2390	--	--	C
SUPPLY CLERK SUPERVISORY	1126	1950	1686	2347	2088	3144	CPSU

Exhibit - 27

ISSUANCE DATE 03-28-88

215 CHANGE OF STATUS OF SALARIED EMPLOYEE
AES / WARREN

NAME: STASKO, STANLEY R. SSN: 381-46-3114
ADDRESS: 27553 LEXINGTON PKWY SOUTHFIELD MI 48076
BIRTHDATE: 06-06-61 SERVICE DATE: 07-18-83 SEX/MINORITY: M/CAUCASIAN
EDUCATION: 16 COLLEGE GRADUATE BACHELOR ENGINEERING - ELECTRICAL -
ORG TITLE: PROJECT ENGINEER REPORTS TO: EXEC DIR APE

* DATA AS OF: 07-18-83 ***** S T A T U S ***** RECOMMENDED AS OF: _____

HN NEW HIRE REG ACTION _____
RA REGULAR ACTIVE (INCL P EMPLOY CAT. _____

* DATA AS OF: 01-16-86 ***** P O S I T I O N ***** RECOMMENDED AS OF: 05-01-88

D1 POSITION BUILD ACTION J PROFICIENCY PROMOTION
6E11 PROJECT ENGINEER GM POS CODE 7E06 SR PROJECT ENGINEER
00100 AES PER UNIT 00100 AES
F161 APE ENDRG DEPARTMENT F161 APE ENDRG
1 SHIFT/BLDG _____
0001094 ORG#/REPLACE 0001884
LOCAL CODE _____

* DATA AS OF: 10-01-87 * C O M P E N S A T I O N * RECOMMENDED AS OF: 05-01-88

W MERIT AWARD ACTION J PROFICIENCY PROMOTION
\$ 3118.00 \$ 1947.00 5.2% RATE/INCR. 3492.00 CHG \$ 374.00 11.0
\$ 1679.00 TO: \$ 3935.00 M RANGE/FREQ \$ 2110.00 TO: \$ 4836.00 M

***** R E A S O N F O R C H A N G E *****
PROFICIENCY PROMOTION

***** L E A V E O F A B S E N C E / S E P A R A T I O N *****

L.D.W. LEAVE FULL PAY PART. PAY WITHOUT PAY
DAYS DAYS DAYS

SEPARATION ALLOWANCE: _____ VACATION DAYS REMAINING: _____

***** H I S T O R I C A L I N F O R M A T I O N *****

EFF DATE	COMP. ACT	BASE RATE	AMOUNT CHANGE	% INC	POS ACT	EFF DATE	GM CD	STA ACT	EFF DATE	APPRAI DATE/F
03-01-86	M	3118.00	245.40	8.5		09-01-85	6E11	5N	08-14-79	12-87/1
01-01-86	T	2972.60	93.60	3.4		07-18-83	5E35	HT	06-16-79	12-86/1
09-01-85	J	2779.00	252.72	10.0		06-16-79	2E30	HC	09-07-78	11-85/3
10-16-84	T	2526.28	518.28	25.8		09-07-78	2E00			01-85/1
09-01-84	M	2008.00	58.00	3.0						01-84/2

***** O R G A N I Z A T I O N A L C H A N G E S *****

ORGANIZATION TITLE: _____ EFFECTIVE DATE: _____

DIRECT: _____ PROJECT: _____ INDIRECT: _____

*** RECOMMENDED BY ***** APPROVED BY *****

[Signature] DATE: 4/13/88 *[Signature]* DATE: 4/19/88
[Signature] DATE: 4/21/88 *[Signature]* DATE: 4/22/88

ISSUED: 07-27-95

SALARIED PERSONNEL TRANSACTION

SM-215/IAD

NAME-----: STANLEY R STASKO

SSN: 381-68-1710

ADDRESS---: 27653 LEXINGTON PKWY
SOUTHFIELD, MI 48076

BIRTHDATE: 06-06-61
PERF/DATE: S 01-22-92

SEX/MINORITY----: M NON-MINORITY
CREDITED SERVICE: 11 YRS 06 MOS

EDUCATION: 16 B LAWRENCE TECH U ENGRG - ELECTRICAL - GENERAL

***** CURRENT ***** S T A T U S ***** RECOMMENDED *****
07-18-83 08-25-95

HN HIRE-REGULAR ACTION CODE 1J QUIT-CAREER CHANGE

RA REGULAR ACTIVE EMP CATEGORY SE SEPARATED

07-18-83 09-07-78

SERV DT/ORIG HIRE

LDW/RTW/REC DLA

08-25-95

SEP ALLOW/VAC HRS

***** P O S I T I O N *****
01-01-95

D8 CHG-REORGANIZATION ACTION CODE

7E06 SR PROJECT ENGINEER POSITION CODE

10020 GM POWERTRAIN-WRN ENG LOCAL NUMBER

WH213 LAB SUPERVISOR/ENGINEER LOCAL TITLE

2130 WARREN MI PERSONNEL UNIT

03 2 P N AOW/EEQ/EXPT/SUPV DEPARTMENT

5110000 GM POWERTRAIN-WARREN AAF FACILITY LOCATION CODE

***** C O M P E N S A T I O N *****

M MERIT INCREASE ACTION CODE

5299.00 186.00 3.6 BASE SAL/CHG/%

3325.00 5160.00 6325.00 MIN/MID/MAX

102.7 M 40.00 % MID/FREQ/HOURS

12-01-91 910.00 1.7 LST AWD DT/AMT/%

***** MR. STASKO IS RESIGNING FROM GENERAL MOTORS CORPORATION EFFECTIVE 8/25/95 TO GO INTO THE MINISTRY. HE IS ENTITLED TO 50% OF HIS 17.5 DAYS OF VACATION PLUS THE FOUR (4) ADDITIONAL DAYS HE PURCHASED. HE HAS TAKEN ALL OF HIS VACATION DAYS. *****

PREDECESSOR(NAME/TITLE):

REQ #:

WILL BE REPLACED(Y/N):

***** SIGNATURES OF AUTHORIZATION *****

APPROVAL/DATE: *General A. Famb...* 8-1-95 *Bruce E. Jones* 8-1-95

APPROVAL/DATE: _____

APPROVAL/DATE: _____

10020 increased on 11/1/95 on 11/1/95

General Motors Corporation

10001 GMC CENTRAL OFFICE

00240

STANLEY R STASKO 381-68-1710 DEPT F161 NON-EXEMPT SEMI-MO

POSITION CODE AND TITLE: 5E35 ASSOC ENGINEER
 POSITION SALARY RANGE: \$1,306.00 TO \$2,310.96

EFFECT OF MERIT INCREASE		08-31-84	CHANGE	09-01-84
MONTHLY BASE SALARY		\$ 1,950.00	\$ 58.00	\$ 2,008.00
SAVINGS-STOCK OPTION 3	1% MID MONTH	12.00	.00	12.00
	1% MONTH END	12.00	1.00	13.00
RETIREMENT DEDUCTION		.00	.00	.00
OPTIONAL LIFE INSURANCE		.00	.00	.00
BASIC LIFE INSURANCE (PAID FOR BY GM)		56,800.00	1,400.00	58,200.00

QUARTERLY COST OF LIVING ALLOWANCE: \$1560.80

General Motors Corporation

10001 GMC CENTRAL OFFICE

02598

STANLEY R STASKO 381-68-1710 DEPT F161 NON-EXEMPT SEMI-M

POSITION CODE AND TITLE: 5E35 ASSOC ENGINEER
 POSITION SALARY RANGE: \$1,306.00 TO \$2,829.24

EFFECT OF COLA TRANSFER TO BASE INCREASE		10-15-84	CHANGE	10-16-84
MONTHLY BASE SALARY		\$ 2,008.00	\$ 518.28	\$ 2,526.28
SAVINGS-STOCK OPTION 3	1% MID MONTH	12.00	.00	12.00
	1% MONTH END	13.00	.00	13.00
RETIREMENT DEDUCTION		.00	.00	.00
OPTIONAL LIFE INSURANCE		.00	.00	.00
BASIC LIFE INSURANCE (PAID FOR BY GM)		58,200.00	2,500.00	60,700.00

QUARTERLY COST OF LIVING ALLOWANCE: \$26.00

10001 GMC CENTRAL OFFICE General Motors Corporation 01695
 STANLEY R STASKO 381-66-1710 DEPT F161 EXEMPT SEMI-M
 POSITION CODE AND TITLE: 6E11 PROJECT ENGINEER
 MONTHLY SALARY RANGE: \$1,679.00 TO \$3,934.84 MIDPOINT: \$3,322.
 ANNUAL SALARY RANGE: \$20,148.00 TO \$47,218.08 MIDPOINT: \$39,870.
 EFFECT OF COLA TRANSFER TO BASE INCREASE 12-31-85 CHANGE 01-01-86
 MONTHLY BASE SALARY \$ 2,779.00 \$ 93.60 \$ 2,872.60
 ANNUAL BASE SALARY \$ 33,348.00 \$ 1,123.20 \$ 34,471.20
 SAVINGS-STOCK 15% MID MONTH 214.00 8.00 222.00
 15% MONTH END 216.00 6.00 222.00
 RETIREMENT DEDUCTION 12.86 1.17 14.03
 OPTIONAL LIFE INSURANCE DED (INC DGLI) 7.84 .18 8.02
 OPTIONAL LIFE INS RETRO ONE TIME ADJ .18 .00 .00
 OPTIONAL LIFE INSURANCE PRINCIPAL SUM 133,400.00 4,500.00 137,900.00
 BASIC LIFE INSURANCE (PAID FOR BY GM) 66,700.00 2,300.00 69,000.00

20A6220A - 8/82

10001 GMC CENTRAL OFFICE General Motors Corporation 00189
 STANLEY R STASKO 381-66-1710 DEP. F161 EXEMPT SEMI-M
 POSITION CODE AND TITLE: 6E11 PROJECT ENGINEER
 POSITION SALARY RANGE: \$1,679.00 TO \$3,425.83
 EFFECT OF PROMOTIONAL INCREASE 08-01-85 CHANGE 09-01-85
 MONTHLY BASE SALARY \$ 2,526.28 \$ 252.72 \$ 2,779.00
 SAVINGS-STOCK 15% MID MONTH 193.00 21.00 214.00
 15% MONTH END 194.00 21.00 215.00
 RETIREMENT DEDUCTION .00 .00 .00
 OPTIONAL LIFE INSURANCE DED (INC DGLI) 7.35 .49 7.84
 OPTIONAL LIFE INS RETRO ONE TIME ADJ .49 .00 .00
 OPTIONAL LIFE INSURANCE PRINCIPAL SUM 121,300.00 12,100.00 133,400.00
 BASIC LIFE INSURANCE (PAID FOR BY GM) 60,700.00 6,000.00 66,700.00
 QUARTERLY COST OF LIVING ALLOWANCE: \$244.40

20A6220A - 8/82

10001 GMC CENTRAL OFFICE

General Motors Corporation

00368

STANLEY R STASKO

381-68-1710 DEPT F161

EXEMPT SEMI-M

EDS COIP

POSITION CODE AND TITLE: 6211 PROJECT ENGINEER

MONTHLY SALARY RANGE:	\$1,679.00 TO	\$3,934.84	MIDPOINT:	\$3,322.58
ANNUAL SALARY RANGE:	\$20,148.00 TO	\$47,210.08	MIDPOINT:	\$39,870.96

EFFECT OF MERIT INCREASE		02-28-86	CHANGE	03-01-86
MONTHLY BASE SALARY	\$	2,872.60	\$ 245.40	\$ 3,118.00
ANNUAL BASE SALARY	\$	34,471.20	\$ 2,944.80	\$ 37,416.00
SAVINGS-STOCK	15% MID MONTH	214.00	18.00	232.00
	15% MONTH END	216.00	18.00	234.00
RETIREMENT DEDUCTION		14.03	3.07	17.10
OPTIONAL LIFE INSURANCE DED (INC DGLI)		8.02	.47	8.49
OPTIONAL LIFE INS RETRO ONE TIME ADJ		.47	.00	.00
OPTIONAL LIFE INSURANCE PRINCIPAL SUM		137,900.00	11,800.00	149,700.00
BASIC LIFE INSURANCE (PAID FOR BY GM)		69,000.00	5,900.00	74,900.00

General Motors Corporation

10001 GMC CENTRAL OFFICE

00136

10001-F -9198

STANLEY R STASKO

381-68-1710 DEPT F161

EXEMPT SEMI-M

EDS COIP

POSITION CODE AND TITLE: 7206 SR PROJECT ENGINEER

MONTHLY SALARY RANGE:	\$2,110.50 TO	\$4,835.42	MIDPOINT:	\$3,775.00
ANNUAL SALARY RANGE:	\$25,326.00 TO	\$58,025.04	MIDPOINT:	\$45,300.00

EFFECT OF PROMOTIONAL INCREASE		04-30-88	CHANGE	05-01-88
MONTHLY BASE SALARY	\$	3,118.00	\$ 374.00	\$ 3,492.00
ANNUAL BASE SALARY	\$	37,416.00	\$ 4,488.00	\$ 41,904.00
SAVINGS-STOCK	10% MID MONTH	155.00	19.00	174.00
	10% MONTH END	156.00	19.00	175.00
RETIREMENT DEDUCTION		13.98	4.67	18.65
OPT LIFE INS DEDUCTION		.00	.00	.00
OPT LIFE INS PRINCIPAL SUM		149,700.00	18,000.00	167,700.00
BASIC LIFE INS (PD BY GM)		74,900.00	9,000.00	83,900.00

General Motors Corporation

10001 GMC CENTRAL OFFICE
 10001-F -9L98
 STANLEY R STASKO

00329

381-68-1710 DEPT F161

EXEMPT SEMI-P

EDS CO13

POSITION CODE AND TITLE: 7E06 SR PROJECT ENGINEER
 MONTHLY SALARY RANGE: \$2,110.50 TO \$5,070.00
 ANNUAL SALARY RANGE: \$25,326.00 TO \$60,840.00

EFFECT OF MERIT INCREASE		04-30-89	CHANGE	05-01-89
MONTHLY BASE SALARY	\$	3,492.00	\$ 251.00	\$ 3,743.00
ANNUAL BASE SALARY	\$	41,904.00	\$ 3,012.00	\$ 44,916.00
SAVINGS-STOCK	10% MID MONTH	174.00	13.00	187.00
	10% MONTH END	175.00	12.00	187.00
RETIREMENT DEDUCTION		18.65	3.14	21.79
OPT LIFE INS DED (INC DGLI)		9.21	.48	9.69
OPT LIFE INS RETRO ONE TIME ADJ		.46	.00	.00
OPT LIFE INS PRINCIPAL SUM		167,700.00	12,000.00	179,700.00
BASIC LIFE INS (PD BY GM)		83,900.00	6,000.00	89,900.00

BASE SALARY CHANGE / RECOGNITION AWARD NOTICE - COMPENSATION STATEMENT

NAME : STASKO, STANLEY R, SSN : 381-68-1710
TITLE : SR PROJECT ENGINEER POS CODE : 7E06
PERUNIT: 00100 AES DEPT : F161 EXEMPT : P

PREVIOUS ANNUAL BASE: 44,916.00 EFFECTIVE DATE : 09/01/90
AMOUNT OF INCREASE : 3,060.00 ^{255 mo} M MERIT INCREASE
NEW ANNUAL BASE : 47,976.00
ANNUAL RANGE MIDPOINT: 52,800.00
RECOGNITION AWARD : 1,120.00 (09/01/90) ANNUAL RANGE MAXIMUM : 63,276.00

BENEFITS IMPACT	PREV AMOUNT	NEW AMOUNT
BASIC LIFE INSURANCE (PAID FOR BY GM):	89,900.00	96,000.00
RETIREMENT DEDUCTION (MONTHLY):	21.79	24.98
OPTIONAL LIFE INS AMOUNT (MONTHLY):	7.19	7.68
SAVINGS STOCK DEDUCTION (MID_MONTH):	187.00	199.00
(END_MONTH):	187.00	200.00

INSTRUCTIONS FOR THE SUPERVISOR (CONFIDENTIAL INFORMATION):
PLEASE PROVIDE YOUR EMPLOYEE WITH THIS INFORMATION; IT CONFIRMS A CHANGE IN
COMPENSATION. BOTH YOU AND THE EMPLOYEE SHOULD SIGN EACH COPY, PROVIDING
ONE TO THE EMPLOYEE AND FORWARDING THE OTHER TO SALARIED PERSONNEL.

COMPENSATION STATEMENT

COMMENCING: SEP 01, 1990 MY COMPENSATION IS \$ 3,998.00 PER MONTH

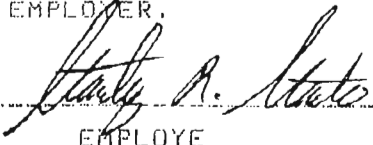
I AM CLASSIFIED AS AN EXEMPT EMPLOYEE UNDER THE PROVISIONS OF THE FAIR
LABOR STANDARDS ACT. THIS STATEMENT, WHICH IS A PART OF MY 'EMPLOYMENT
AGREEMENT,' RECOGNIZES THAT THE RATE CITED ABOVE WILL BE MY COMPENSATION
FOR ALL HOURS WORKED, INCLUDING OVERTIME, DURING EACH MONTHLY PERIOD.
HOWEVER, A NIGHT SHIFT PREMIUM, AN EXTENDED WORKWEEK SALARY PREMIUM OR
AN OVERTIME PREMIUM FOR SCHEDULED OVERTIME HOURS MAY BE PAID ME, IF
APPROVED, IN ACCORDANCE WITH THE POLICY OR PRACTICE IN EFFECT. ACCEPTANCE
BY ME OF MY PAY, WITHOUT PROTEST IN WRITING, SHALL ACKNOWLEDGE THAT I HAVE
BEEN PAID IN FULL FOR THE PERIOD.

WHEN SIGNED AND ACCEPTED, THIS STATEMENT BECOMES A PART OF MY BASIC
'EMPLOYMENT AGREEMENT' AND REAFFIRMS THAT MY EMPLOYMENT IS FROM
MONTH-TO-MONTH ON A CALENDAR MONTH BASIS.

THIS STATEMENT REPLACES ANY PREVIOUS 'COMPENSATION STATEMENTS' AND
SHALL CONTINUE IN EFFECT UNTIL THE BASIC 'EMPLOYMENT AGREEMENT', OR MY
EMPLOYMENT, IS TERMINATED, OR UNTIL REPLACED BY A NEW 'COMPENSATION
STATEMENT.'

IN CONSIDERATION OF MY CONTINUED EMPLOYMENT, I ACKNOWLEDGE THAT I HAVE
RECEIVED ALL COMPENSATION DUE ME FOR ALL SERVICES I RENDERED PRIOR TO
THE SIGNING OF THIS STATEMENT.

THERE ARE NO OTHER ARRANGEMENTS, AGREEMENTS, UNDERSTANDINGS, OR
STATEMENTS, VERBAL OR IN WRITING, EXCEPT AS STATED ABOVE. NO MODIFICATION
OR AMENDMENT, OTHER THAN A CANCELLATION AND REPLACEMENT BY ANOTHER WRITTEN
'COMPENSATION STATEMENT', WILL BE EFFECTIVE, UNLESS SIGNED BY ME AND MY
EMPLOYER.


EMPLOYEE

9/5/90
DATE


SUPERVISOR

9-5-90
DATE

BASE SALARY CHANGE NOTICE - COMPENSATION STATEMENT

NAME : STASKO, STANLEY R, SSN : 381-68-1710
 TITLE : SR PROJECT ENGINEER POS CODE : 7E06
 PERUNIT: 00100 AES DEPT : F161 EXEMPT : P

PREVIOUS ANNUAL BASE: 47,976.00 EFFECTIVE DATE : 09/01/91
 AMOUNT OF INCREASE : 4,824.00 (402 mth) M MERIT INCREASE
 NEW ANNUAL BASE : 52,800.00 ANNUAL RANGE MIDPOINT: 55,368.00
 ANNUAL RANGE MAXIMUM : 66,276.00

BENEFITS IMPACT	PREV AMOUNT	NEW AMOUNT
BASIC LIFE INSURANCE (PAID FOR BY GM):	96,000.00	105,600.00
RETIREMENT DEDUCTION (MONTHLY):	24.98	30.00
OPTIONAL LIFE INS AMOUNT (MONTHLY):	7.68	8.45
SAVINGS STOCK DEDUCTION (MID_MONTH):	119.00	132.00
(END_MONTH):	120.00	132.00

INSTRUCTIONS FOR THE SUPERVISOR (CONFIDENTIAL INFORMATION):
 PLEASE PROVIDE YOUR EMPLOYEE WITH THIS INFORMATION: IT CONFIRMS A CHANGE IN
 COMPENSATION. BOTH YOU AND THE EMPLOYEE SHOULD SIGN EACH COPY, PROVIDING
 ONE TO THE EMPLOYEE AND FORWARDING THE OTHER TO SALARIED PERSONNEL.

COMPENSATION STATEMENT

COMMENCING: SEP 01, 1991 MY COMPENSATION IS \$ 4,400.00 PER MONTH

I AM CLASSIFIED AS AN EXEMPT EMPLOYEE UNDER THE PROVISIONS OF THE FAIR
 LABOR STANDARDS ACT. THIS STATEMENT, WHICH IS A PART OF MY 'EMPLOYMENT
 AGREEMENT,' RECOGNIZES THAT THE RATE CITED ABOVE WILL BE MY COMPENSATION
 FOR ALL HOURS WORKED, INCLUDING OVERTIME, DURING EACH MONTHLY PERIOD.
 HOWEVER, A NIGHT SHIFT PREMIUM, AN EXTENDED WORKWEEK SALARY PREMIUM OR
 AN OVERTIME PREMIUM FOR SCHEDULED OVERTIME HOURS MAY BE PAID ME, IF
 APPROVED, IN ACCORDANCE WITH THE POLICY OR PRACTICE IN EFFECT. ACCEPTANCE
 BY ME OF MY PAY, WITHOUT PROTEST IN WRITING, SHALL ACKNOWLEDGE THAT I HAVE
 BEEN PAID IN FULL FOR THE PERIOD.

WHEN SIGNED AND ACCEPTED, THIS STATEMENT BECOMES A PART OF MY BASIC
 'EMPLOYMENT AGREEMENT' AND REAFFIRMS THAT MY EMPLOYMENT IS FROM
 MONTH-TO-MONTH ON A CALENDAR MONTH BASIS.

THIS STATEMENT REPLACES ANY PREVIOUS 'COMPENSATION STATEMENTS' AND
 SHALL CONTINUE IN EFFECT UNTIL THE BASIC 'EMPLOYMENT AGREEMENT', OR MY
 EMPLOYMENT, IS TERMINATED, OR UNTIL REPLACED BY A NEW 'COMPENSATION
 STATEMENT.'

IN CONSIDERATION OF MY CONTINUED EMPLOYMENT, I ACKNOWLEDGE THAT I HAVE
 RECEIVED ALL COMPENSATION DUE ME FOR ALL SERVICES I RENDERED PRIOR TO
 THE SIGNING OF THIS STATEMENT.

THERE ARE NO OTHER ARRANGEMENTS, AGREEMENTS, UNDERSTANDINGS, OR
 STATEMENTS, VERBAL OR IN WRITING, EXCEPT AS STATED ABOVE. NO MODIFICATION
 OR AMENDMENT, OTHER THAN A CANCELLATION AND REPLACEMENT BY ANOTHER WRITTEN
 'COMPENSATION STATEMENT', WILL BE EFFECTIVE, UNLESS SIGNED BY ME AND MY
 EMPLOYER.

Stanley R. Stasko

EMPLOYEE

9/3/91

DATE

James A. Fair

SUPERVISOR

9-3-91

DATE

BASE SALARY CHANGE NOTICE - COMPENSATION STATEMENT

NAME : STASKO, STANLEY, R SSN : 381-68-1710
TITLE : SR PROJECT ENGINEER POS CODE : 7E06
PERUNIT: 10020 GM POWERTRAIN-WRN ENG DEPT : 53200 EXEMPT : P

PREVIOUS ANNUAL BASE: 52,800.00 EFFECTIVE DATE : 10/01/93
AMOUNT OF INCREASE : 4,632.00 M MERIT INCREASE
NEW ANNUAL BASE : 57,432.00 ANNUAL RANGE MIDPOINT: 58,200.00
ANNUAL RANGE MAXIMUM : 70,500.00

INSTRUCTIONS FOR THE SUPERVISOR (CONFIDENTIAL INFORMATION):

PLEASE PROVIDE YOUR EMPLOYEE WITH THIS INFORMATION: IT CONFIRMS A CHANGE IN COMPENSATION. BOTH YOU AND THE EMPLOYEE SHOULD SIGN EACH COPY, PROVIDING ONE TO THE EMPLOYEE AND FORWARD THE OTHER TO SALARIED PERSONNEL.

COMPENSATION STATEMENT

NAME: STASKO, STANLEY, R UNIT: 10020 GM POWERTRAIN-WRN ENG
COMMENCING: OCT 01, 1993 MY COMPENSATION IS \$ 4,786.00 PER MONTH.

I AM CLASSIFIED AS AN EXEMPT EMPLOYEE UNDER THE PROVISIONS OF THE FAIR LABOR STANDARDS ACT. THIS STATEMENT, WHICH IS A PART OF MY 'EMPLOYMENT AGREEMENT,' RECOGNIZES THAT THE RATE CITED ABOVE WILL BE MY COMPENSATION FOR ALL HOURS WORKED, INCLUDING OVERTIME, DURING EACH MONTHLY PERIOD. HOWEVER, A NIGHT SHIFT PREMIUM, AN EXTENDED WORKWEEK SALARY PREMIUM OR AN OVERTIME PREMIUM FOR SCHEDULED OVERTIME HOURS MAY BE PAID ME, IF APPROVED, IN ACCORDANCE WITH THE POLICY OR PRACTICE IN EFFECT. ACCEPTANCE BY ME OF MY PAY, WITHOUT PROTEST IN WRITING, SHALL ACKNOWLEDGE THAT I HAVE BEEN PAID IN FULL FOR THE PERIOD.

WHEN SIGNED AND ACCEPTED, THIS STATEMENT BECOMES A PART OF MY BASIC 'EMPLOYMENT AGREEMENT' AND REAFFIRMS THAT MY EMPLOYMENT IS FROM MONTH-TO-MONTH ON A CALENDAR MONTH BASIS.

THIS STATEMENT REPLACES ANY PREVIOUS 'COMPENSATION STATEMENTS' AND SHALL CONTINUE IN EFFECT UNTIL THE BASIC 'EMPLOYMENT AGREEMENT', OR MY EMPLOYMENT, IS TERMINATED, OR UNTIL REPLACED BY A NEW 'COMPENSATION STATEMENT.'

IN CONSIDERATION OF MY CONTINUED EMPLOYMENT, I ACKNOWLEDGE THAT I HAVE RECEIVED ALL COMPENSATION DUE ME FOR ALL SERVICES I RENDERED PRIOR TO THE SIGNING OF THIS STATEMENT.

THERE ARE NO OTHER ARRANGEMENTS, AGREEMENTS, UNDERSTANDINGS, OR STATEMENTS, VERBAL OR IN WRITING, EXCEPT AS STATED ABOVE. NO MODIFICATION OR AMENDMENT, OTHER THAN A CANCELLATION AND REPLACEMENT BY ANOTHER WRITTEN 'COMPENSATION STATEMENT', WILL BE EFFECTIVE, UNLESS SIGNED BY ME AND MY EMPLOYER.

Stanley Stasko 9/28/93 *Gerald A Fairbairn* 9-28-93
EMPLOYEE DATE SUPERVISOR DATE

BASE SALARY CHANGE NOTICE - COMPENSATION STATEMENT

NAME : STASKO, STANLEY, R SSN : 381-68-1710
TITLE : SR PROJECT ENGINEER POS CODE : 7E06
PERUNIT: 10020 GM POWERTRAIN-WRN ENG DEPT : 53150 EXEMPT : P

PREVIOUS ANNUAL BASE: 57,432.00 EFFECTIVE DATE : 06/01/94
AMOUNT OF INCREASE : 3,924.00 M MERIT INCREASE
NEW ANNUAL BASE : 61,356.00 ANNUAL RANGE MIDPOINT: 59,940.00
ANNUAL RANGE MAXIMUM : 73,680.00
=====

INSTRUCTIONS FOR THE SUPERVISOR (CONFIDENTIAL INFORMATION):

PLEASE PROVIDE YOUR EMPLOYEE WITH THIS INFORMATION: IT CONFIRMS A CHANGE IN COMPENSATION. BOTH YOU AND THE EMPLOYEE SHOULD SIGN EACH COPY, PROVIDING ONE TO THE EMPLOYEE AND FORWARD THE OTHER TO SALARIED PERSONNEL.

COMPENSATION STATEMENT

NAME: STASKO, STANLEY, R UNIT: 10020 GM POWERTRAIN-WRN ENG
COMMENCING: JUN 01, 1994 MY COMPENSATION IS \$ 5,113.00 PER MONTH.

I AM CLASSIFIED AS AN EXEMPT EMPLOYEE UNDER THE PROVISIONS OF THE FAIR LABOR STANDARDS ACT. THIS STATEMENT, WHICH IS A PART OF MY 'EMPLOYMENT AGREEMENT,' RECOGNIZES THAT THE RATE CITED ABOVE WILL BE MY COMPENSATION FOR ALL HOURS WORKED, INCLUDING OVERTIME, DURING EACH MONTHLY PERIOD. HOWEVER, A NIGHT SHIFT PREMIUM, AN EXTENDED WORKWEEK SALARY PREMIUM OR AN OVERTIME PREMIUM FOR SCHEDULED OVERTIME HOURS MAY BE PAID ME, IF APPROVED, IN ACCORDANCE WITH THE POLICY OR PRACTICE IN EFFECT. ACCEPTANCE BY ME OF MY PAY, WITHOUT PROTEST IN WRITING, SHALL ACKNOWLEDGE THAT I HAVE BEEN PAID IN FULL FOR THE PERIOD.

WHEN SIGNED AND ACCEPTED, THIS STATEMENT BECOMES A PART OF MY BASIC 'EMPLOYMENT AGREEMENT' AND REAFFIRMS THAT MY EMPLOYMENT IS FROM MONTH-TO-MONTH ON A CALENDAR MONTH BASIS.

THIS STATEMENT REPLACES ANY PREVIOUS 'COMPENSATION STATEMENTS' AND SHALL CONTINUE IN EFFECT UNTIL THE BASIC 'EMPLOYMENT AGREEMENT', OR MY EMPLOYMENT, IS TERMINATED, OR UNTIL REPLACED BY A NEW 'COMPENSATION STATEMENT.'

IN CONSIDERATION OF MY CONTINUED EMPLOYMENT, I ACKNOWLEDGE THAT I HAVE RECEIVED ALL COMPENSATION DUE ME FOR ALL SERVICES I RENDERED PRIOR TO THE SIGNING OF THIS STATEMENT.

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Stanley Stasko 5/23/94 James A. Fairchild 5/23/94
EMPLOYEE DATE SUPERVISOR DATE

BASE SALARY CHANGE NOTICE - COMPENSATION STATEMENT

NAME : STASKO, STANLEY, R SSN : 381-68-1710
TITLE : SR PROJECT ENGINEER POS CODE : 7E06
PERUNIT: 10020 GM POWERTRAIN-WRN ENG DEPT : WH213 EXEMPT : P

PREVIOUS ANNUAL BASE: 61,356.00 EFFECTIVE DATE : 06/01/95
AMOUNT OF INCREASE : 2,232.00 M MERIT INCREASE
NEW ANNUAL BASE : 63,588.00 ANNUAL RANGE MARKET RATE: 61,920.00
ANNUAL RANGE MAXIMUM : 75,900.00

INSTRUCTIONS FOR THE SUPERVISOR (CONFIDENTIAL INFORMATION):

PLEASE PROVIDE YOUR EMPLOYEE WITH THIS INFORMATION: IT CONFIRMS A CHANGE IN COMPENSATION AND/OR EXEMPT STATUS. BOTH YOU AND THE EMPLOYEE SHOULD SIGN EACH COPY, PROVIDING ONE TO THE EMPLOYEE AND FORWARD THE OTHER TO SALARIED PERSONNEL.

COMPENSATION STATEMENT

NAME: STASKO, STANLEY, R UNIT: 10020 GM POWERTRAIN-WRN ENG
COMMENCING: JUN 01, 1995 MY COMPENSATION IS \$ 5,299.00 PER MONTH.

I AM CLASSIFIED AS AN EXEMPT EMPLOYEE UNDER THE PROVISIONS OF THE FAIR LABOR STANDARDS ACT. THIS STATEMENT, WHICH IS A PART OF MY 'EMPLOYMENT AGREEMENT,' RECOGNIZES THAT THE RATE CITED ABOVE WILL BE MY COMPENSATION FOR ALL HOURS WORKED, INCLUDING OVERTIME, DURING EACH MONTHLY PERIOD. HOWEVER, A NIGHT SHIFT PREMIUM, AN EXTENDED WORKWEEK SALARY PREMIUM OR AN OVERTIME PREMIUM FOR SCHEDULED OVERTIME HOURS MAY BE PAID ME, IF APPROVED, IN ACCORDANCE WITH THE POLICY OR PRACTICE IN EFFECT. ACCEPTANCE BY ME OF MY PAY, WITHOUT PROTEST IN WRITING, SHALL ACKNOWLEDGE THAT I HAVE BEEN PAID IN FULL FOR THE PERIOD.

WHEN SIGNED AND ACCEPTED, THIS STATEMENT BECOMES A PART OF MY BASIC 'EMPLOYMENT AGREEMENT' AND REAFFIRMS THAT MY EMPLOYMENT IS FROM MONTH-TO-MONTH ON A CALENDAR MONTH BASIS.

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Stanley Stasko *6/19/95* *Guadalupe F...* *6-19-95*
EMPLOYEE DATE SUPERVISOR DATE

Handwritten initials/signature

Exhibit - 28

When the plaintiff work for General Motors Corporation from July 1983 to August 1995 it was **common knowledge** and **common practice** whereby an employee could **make a suggestion improvement** and **receive a suggestion award** of 10% of the first year cost savings associated with the suggestion.

- The suggestion could be for items as simple as replacing lighting bulbs with new higher efficiency lighting bulbs.
- The monetary award was calculated by:
 - First year costs savings
 - Minus implementation costs of the suggestion
 - 10% award of net savings awarded to suggestion person (up to a maximum of \$20,000)

The plaintiff would argue that the unique solutions below qualify for a momentary award because of the plaintiff's solution to unique problems encountered by General Motors Corporation.

1. **Plaintiff's Management / Leadership – Unique solutions**

- 1.1. Programmable Logic Controllers – integrated into Emissions Analysis Systems; (see below for details); Don Nagy of General Motors Milford Proving Grounds specifically stated that Programmable Logic Controllers has been tried by General Motors before and cannot be made to work for Emission Analysis Systems applications
- 1.2. DSP Combustion Analysis System – Several years later; (see below for details); General Motors Corporation and DSP Technology had a problem with the DSP Combustion Analysis Systems that General Motors Corporation could not solve nor could DSP Technology solve
- 1.3. Dynamometer Test Cell #13 Renovation; (see below for details); the first modern, integrated Dynamometer Test Cell renovation at the General Motors Technical Center; completed in CY1990

Stasko v General Motors Corporation – Unique Solutions by Plaintiff

- 1.4. Dynamometer Test Cell #06 Legal Issue; (see below for details); General Motors has a \$20 Million dollar legal issue and nobody in General Motors can figure out the problem; eventually, General Motors asks plaintiff to try to solve the problem
- 1.5. New Dynamometer Wing Ground Wire; (see below for details); the Engineering Building Dynamometer Wing electrical grounding was a crows nest of electrical grounding schemes

2. Programmable Logic Controllers – integrated into Emissions Analysis Systems

- 2.1. Don Nagy of General Motors Milford Proving Grounds specifically stated that Programmable Logic Controllers have been tried by General Motors before and cannot be made to work for Emissions Analysis Systems application; Don Nagy recommended using Milford Vehicle Emissions Lab Bench Controller
- 2.2. When General Motors was starting up the first Programmable Logic Controller and a minor problem appeared between the Emissions Test Site Computer and the Programmable Logic Controller; you should have seen Jo-han-na You-house (Don Nagy's representative from General Motors Milford Proving Grounds responsible for the Emissions Test Site Computer) **run** to the telephone and start complaining that it does not work
- 2.3. plaintiff rewrote practically all of the Modicon 884 PLC software provided by Richmond Instruments
 - 2.3.1. Richmond Instruments software exhausted PLC memory
 - 2.3.2. Richmond Instruments software incomplete and non-functioning
- 2.4. plaintiff version of Modicon 884 PLC software uses unique programming logic
- 2.5. plaintiff proved Don Nagy and General Motors wrong by proving Programmable Logic Controllers can be used in Emission Analysis System applications
- 2.6. plaintiff implementation of Modicon 884 Programmable Logic Controllers is another example of plaintiff expanding General Motors vendor base because General Motors strongly uses Allen Bradley Programmable Logic Controllers

3. DSP Combustion Analysis System – Several years later

- 3.1. Several years later General Motors Corporation and DSP Technology had a problem with the DSP Combustion Analysis Systems that General Motors Corporation could not solve nor could DSP Technology solve
 - 3.1.1. This can be verified by talking to General Motors engineer Tony Sperling or with DSP Technology (try DSP Technology sales representative Tim Sante)
- 3.2. General Motors Corporation got so desperate that they accused DSP Technology of having a software virus in their equipment
- 3.3. General Motors Corporation asked plaintiff to try to solve the problem
- 3.4. The basic problem – DSP Technology Combustion Analysis System RPM signal unstable
- 3.5. Example: 2400 RPM + / - a lot of fluctuation
- 3.6. plaintiff within minutes breaks solves the problem
- 3.7. RPM signal from one pulse per revolution signal
- 3.8. 2400 RPM equals 40 pulses per second
- 3.9. Display updates approximately one update per second
- 3.10. Therefore RPM signal accuracy at 2400 RPM equals 40 pulses + / - 1 pulse equals 2.5 percent accuracy
- 3.11. 2400 RPM * 2.5 percent equals 60 RPM
- 3.12. 2400 RPM + / - 60 RPM; Problem solved!
- 3.13. Remember nobody in General Motors Corporation nor in DSP Technology could figure out the problem
- 3.14. plaintiff reward for solving this problem – basically nothing

4. Dynamometer Test Cell #13 Renovation

- 4.1. The first modern, integrated Dynamometer Test Cell renovation at the General Motors Technical Center; completed in CY1990
- 4.2. plaintiff designed, engineered, and incorporated new CPI front-end equipment into Dynamometer Test Cell #13 renovation; see above in resume for details
- 4.3. plaintiff designed, engineered, and incorporated new Programmable Logic Controller and PLC Enclosure into Dynamometer Test Cell #13 renovation; see above in resume for details
 - 4.3.1. Including interfacing to Dynamometer Hard Stop safety circuit
 - 4.3.2. Auxiliary temperature safety meters
 - 4.3.3. Engine and Dynamometer RPM safety meters
 - 4.3.4. Manual push button Test Cell interface panel
 - 4.3.5. General Electric Solid State Dynamometer Controller
 - 4.3.6. Engine Coolant and Engine Oil Temperature Control System
 - 4.3.7. Supply and Exhaust Fan for Dynamometer Test Cell ventilation and pressure control
 - 4.3.8. Existing Motor Control Center
- 4.4. Aaron Trammel fabricated the Fuel System control enclosure that housed the Fuel System control solenoids
- 4.5. plaintiff incorporated new Instrumentation Booms into Dynamometer Test Cell #13 renovation; see above in resume for details
- 4.6. plaintiff incorporated new Engine Coolant and Engine Oil Process Control into Dynamometer Test Cell #13 renovation; see above in resume for details
- 4.7. plaintiff designed, engineered, and incorporated the first Dynamometer Test Cell ventilation and pressure control system into Dynamometer Test Cell #13
- 4.8. plaintiff new Druck Pressure Transducers into Dynamometer Test Cell #13 renovation; see above in resume for details
 - 4.8.1. after over one year the Druck Pressure Transducers remained within calibration specifications; a significant maintenance time and cost savings

Stasko v General Motors Corporation – Unique Solutions by Plaintiff

- 4.9. plaintiff takes no credit for Cell #13 Motor Control Center; this was a piece of extra equipment from the Dynamometer Wing blend-house renovation project
- 4.10. Specified, ordered, and procured major components associated with:
 - 4.10.1. new CPI Front-end equipment
 - 4.10.2. new Programmable Logic Controller hardware
 - 4.10.3. new Engine Coolant and Engine Oil Process Control equipment
 - 4.10.4. new Honeywell UDC3000 Process Controllers
- 4.11. Generated the required documentation for the design of:
 - 4.11.1. new CPI Front-end equipment
 - 4.11.2. new Programmable Logic Controller hardware
 - 4.11.3. new Programmable Logic Controller software programming
 - 4.11.4. new Engine Coolant and Engine Oil Process Control equipment
 - 4.11.5. new Honeywell UDC3000 Process Controllers configuration
 - 4.11.5.1. one configuration for Engine Coolant Process Control
 - 4.11.5.2. one configuration for Engine Oil Process Control
 - 4.11.5.3. one configuration for Test Cell Ventilation and pressure control
 - 4.11.6. Supply Fan Variable Frequency Drive configuration
 - 4.11.7. Exhaust Fan Variable Frequency Drive configuration
 - 4.11.8. existing Motor Control Center
- 4.12. Project management and project coordination of work activity between General Motors Dynamometer Wing salaried personnel, General Motors Emission Wing salaried personnel, software personnel and UAW personnel by writing project activity timeline utilizing Timeline project management software
 - 4.12.1. verify by contacting Bob Welsh; plaintiff knew Bob Welsh as the highest ranking UAW representative in GM Technical Center, Engineering Building, Warren, Michigan from approximately CY1989 to CY1995)
- 4.13. Provided detailed startup assisted for:
 - 4.13.1. new CPI Front-end equipment (can be verified with Karl Klida)
 - 4.13.2. new Programmable Logic Controller hardware

Stasko v General Motors Corporation – Unique Solutions by Plaintiff

- 4.13.3. new Programmable Logic Controller software programming
- 4.13.4. new Engine Coolant and Engine Oil Process Control equipment (can be verified with John Carver or Dave Van-poel-e-vor-de) new Engine Coolant and Engine Oil Process Control equipment
- 4.13.5. new Honeywell UDC3000 Process Controllers configuration
 - 4.13.5.1. one configuration for Engine Coolant Process Control
 - 4.13.5.2. one configuration for Engine Oil Process Control
 - 4.13.5.3. one configuration for Test Cell Ventilation and pressure control
- 4.13.6. Supply Fan Variable Frequency Drive configuration
- 4.13.7. Exhaust Fan Variable Frequency Drive configuration
- 4.13.8. existing Motor Control Center
- 4.14. first modern and integrated Dynamometer Test Cell renovation
 - 4.14.1. Prior to plaintiff renovating Dynamometer Test Cells, Dynamometer Test Cell engineers and managers would come-and-go readily
 - 4.14.1.1. Phil Mo-han, Aaron Shin, Jim K-hill, Dave Thacher, Clark Bell, Steve Kaatz
 - 4.14.2. Prior to plaintiff renovating a Dynamometer Test Cell basically consisted of updating a piece of equipment (like a new exhaust fan) and maybe a fresh coat of paint.
 - 4.14.3. over time Dynamometer Test Cells were becoming a crows nest of one-of-a-kind equipment
 - 4.14.4. Dynamometer Test Cell #13 honestly looked like a new Dynamometer Test Cell looks new!
- 4.15. Prior to plaintiff renovating Dynamometer Test Cell #13, plaintiff knows of nobody in General Motors Corporation designing, engineering, and project managing an entire Dynamometer Test Cell renovation in-house; a major project like this would have been outsourced to a company like Sverdrup (now Jacobs Engineering) and would have cost General Motors hundreds of thousands of dollars; plaintiff did the complete job for a fraction of the cost

5. **Dynamometer Test Cell #06 Legal Issue**

- 5.1. General Motors has a \$20 Million dollar legal issue
- 5.2. nobody in General Motors can figure out the problem
- 5.3. eventually General Motors asks plaintiff to try to solve the problem
 - 5.3.1. there is a General Motors Guidelines that specifies Dynamometer Test Cell Ventilation depression setting of 1.0 inch water
 - 5.3.2. many years ago plaintiff told General Motors that the specification was wrong; the Dynamometer Test Cell Ventilation depression setting should be 0.1 inches of water not 1.0 inches of water
 - 5.3.3. General Motors basically tells plaintiff to shut-up (plaintiff was only a 5th or 6th level Project Engineer when plaintiff told General Motors that the specification was wrong)
- 5.4. when General Motors changes the Dynamometer Test Cell Ventilation depression setting to plaintiff recommendation of 0.1 inch water the problem is solved
- 5.5. what reward did General Motors give plaintiff for resolving General Motors \$20 Million Dollar Dynamometer Test Cell #06 Legal Issue => basically nothing, not even a thank-you plaintiff
- 5.6. this can be verified by contacting Steve Kaatz or Don Du-zon-berry (General Motors Salaried engineers associated with Dynamometer Test Cell #06 Testing)
- 5.7. some time passes
- 5.8. near the end of plaintiff career with General Motors, plaintiff mentions that plaintiff resolved a \$20 Million Dollar Dynamometer Test Cell #06 Legal Issue for General Motors and that General Motors did not even say thank-you
 - 5.8.1. General Motors now tells plaintiff that the Dynamometer Test Cell #06 Legal Issue was worth \$2 Million dollars not \$20 Million dollars
 - 5.8.2. what financial reward did General Motors give plaintiff for resolving General Motors Dynamometer Test Cell #06 Legal Issue => basically nothing
 - 5.8.3. General Motors tells plaintiff thank-you

6. New Dynamometer Wing Ground Wire

- 6.1. the Engineering Building Dynamometer Wing electrical grounding was a crows nest of electrical grounding schemes
 - 6.1.1. Dynamometer Basement 480 VAC bus grounding
 - 6.1.2. Dynamometer grounding
 - 6.1.3. Mech Box grounding
 - 6.1.4. General 120 VAC power outlets and lighting grounding
 - 6.1.5. Instrumentation grounding
 - 6.1.6. Dynamometer Bedplate grounding
 - 6.1.7. Engine-under-test grounding
- 6.2. plaintiff designed a custom Dynamometer Wing Ground Wire scheme to begin the process of elimination the crows nest of electrical grounding schemes as each Dynamometer Test Cell was renovated
- 6.3. plaintiff would consider his Dynamometer Wing Ground Wire scheme his own unique / priority design

Exhibit - 29

Stasko v General Motors Corporation – Major Accomplishments by Plaintiff

When the plaintiff work for General Motors Corporation from July 1983 to August 1995 it was **common knowledge** and **common practice** whereby an employee could **make a suggestion improvement** and **receive a suggestion award** of 10% of the first year cost savings associated with the suggestion.

- The suggestion could be for items as simple as replacing lighting bulbs with new higher efficiency lighting bulbs.
- The monetary award was calculated by:
 - First year costs savings
 - Minus implementation costs of the suggestion
 - 10% award of net savings awarded to suggestion person (up to a maximum of \$20,000)

The plaintiff would argue that the accomplishments below qualify for a momentary award because they are major accomplishments normally associated with a promotion within General Motors Corporation.

Plaintiff's Management / Leadership – Major Accomplishments for which plaintiff did not receive a bonus

- 1.1. Emission Wing Renovation – Design Coordination; (see Exhibit 16 for details)
- 1.2. Emissions Wing Renovation – Project Management; (see Exhibit 16 for details)
- 1.3. Dynamometer Wing Renovation – Project Management; (see Exhibit 16 for details)
- 1.4. Dynamometer Test Cell #13 Renovation; (see Exhibit 16 for details)
- 1.5. Dynamometer Test Cell #03 Renovation; (see Exhibit 16 for details)
- 1.6. Dynamometer Test Cell #07 Renovation with New Hemi-anechoic Chamber; (see Exhibit 16 for details)
- 1.7. Dynamometer Test Cell #11 Renovation; (see Exhibit 16 for details)
- 1.8. Dynamometer Test Cell #15 Renovation; (see Exhibit 16 for details)
- 1.9. Dynamometer Test Cell #08 Renovation; (see Exhibit 16 for details) - integration of New Programmable Logic Controller (PLC) and Modicon Panelmate 2000 Video Based

Stasko v General Motors Corporation – Major Accomplishments by Plaintiff

Man-Machine Interface advanced Dynamometer Test Cell Renovations to the next higher level

Exhibit - 30

General Motors Powertrain Lab One (Pontiac, MI) - EMCOR subsidiary Shambaugh & Son designed, fabricated, and installed the fire protection systems for this new automotive research and development facility, which consists of 85 fuel test cells and 35 non-fuel test cells supported by its own tank farm and central energy plant. The new facility consolidates four engineering and five test lab facilities under one roof, making it the headquarters for the Powertrain Group on GM's Pontiac campus. Shambaugh's scope of work for the project consisted of designing, fabricating, and installing 10 wet automatic sprinkler systems, two dry automatic sprinkler systems, two high pressure water mist systems, 5,500 sprinkler heads, 11 miles of sprinkler pipe, and a 2,500 gpm diesel fire pump house.

In addition, EMCOR PACE Mechanical is performing the Mechanical Process Piping work at GM's new Dynamometer engine test facility. This large test facility of 85 test cells includes cells that simulate extreme outdoor conditions as low as -55 degrees F. The facility is intended to keep GM current with engine technology well into the future.

- WWW.GM.COM HAD AN ANNOUNCEMENT ABOUT A NEW 500 MILLION DOLLAR TEST FACILITY IN PONTIAC, MICHIGAN
- RECENTLY THE PLAINTIFF TRIED TO RECOVER A COPY OF THE ANNOUNCEMENT
- PLAINTIFF COULD NOT FIND THE ANNOUNCEMENT AT WWW.GM.COM
- PLAINTIFF DID FIND THIS ANNOUNCEMENT BY A SUPPLIER THAT MAY BE RELATED TO THE NEW TEST FACILITY

GM bringing 1,200 jobs to Pontiac

Oakland Press, The (Pontiac, MI) - Tuesday, June 26, 2007

A new 450,000-square-foot test center for engines and transmissions, which will bring 1,200 high-tech jobs to Pontiac, is rising quickly behind the General Motors Powertrain Group headquarters on the north side of Pontiac.

GM, which plans to ask the city of Pontiac soon for a tax abatement for the major project, plans to start moving some of its engineers and technicians into the new center later this year, said Susan Garavaglia, a company spokeswoman.

"Employees will begin their transition to the new **facility** later this year and through 2008," Garavaglia said. Almost all of the 1,200 employees who will be relocating are from Wixom, Ypsilanti, Romulus and Warren, she added.

The site of the new construction, which faces Joslyn Road, was once the home of the Pontiac Motor Division and is one of the most company's most storied properties, having been used by the giant automaker continuously since the early 1920s.

GM continues to operate a metal fabricating plant on the site, and one of the automaker's largest parts warehouses is on the north side of Columbia Avenue.

During the 1990s, however, **GM** shut down and dismantled a foundry, an engine plant and an assembly plant at the center of the site. Since then, **GM** has spent several million dollars on an environmental cleanup of the site. Part of the site was sold to the U.S. Postal Service for a sorting center, which is also nearly complete.

The shift is part of the company's continuing effort to concentrate its engineers and technicians with responsibility for developing the company's engines and transmissions in one place, **GM** officials have said.

The company now has about 3,000 engineers, technicians and support staff on the Pontiac campus, which was extensively remodeled earlier in the decade.

"What we're trying to do is develop the world's best powertrains," said Tom Stephens, the group executive in charge of **GM** powertrain operations. "We're going to try and continue to obsolete our products. In my opinion, the most important thing is that I am willing to learn faster than the next guy."

The **GM** Powertrain campus now stretches from the 1960s-style administration building commissioned by John DeLorean, when he was general manager of the Pontiac Motor Division. It also includes an addition, which opened after the organization of the Powertrain Group in the late 1990s, and an engineering building put up in the 1940s and 1950s.

The construction of the new wing was spurred by the fact that much of the equipment at the other **GM** sites in Ypsilanti and Warren was 30 and 40 years old and at the end of

useful life, and needed to be replaced.

In addition, automakers are under considerable pressure from both consumers and regulators to improve the fuel economy of their vehicles. Only last week, the U.S. Senate voted to raise corporate average fuel economy standards for the first time since 1975.

Consumers also have become increasingly sensitive to rising gasoline prices, the top **GM** marketing executive in North America said last week.

Mark LaNeve, **GM** vice president of sales, service and marketing, said **GM** actually has emerged as the leader in fuel economy in many segments and expects to continue to post improvements in the years to come.

Garavaglia said **GM** studied refurbishing the other laboratories, but ultimately decided the best solution was to concentrate its resources in Pontiac.

The moves from Warren, Romulus and Ypsilanti will concentrate all of **GM** 's engine, transmission and hybrid-vehicle development in Oakland County.

Engine-development work also will be done at the Milford Proving Ground and at the joint hybrid development center in Troy, which also houses engineers and technicians from DaimlerChrysler and BMW.

Section: Local News

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GM plan is \$193 million for Pontiac - Carmaker's engine design complex project to give city much-needed economic boost

Detroit News, The (MI) - Sunday, April 23, 2000

Author: *The Detroit News ; R.J. King*

PONTIAC -- General Motors Corp. is giving Pontiac a badly needed tuneup.

GM this week is to announce a \$193 million investment in its Pontiac North engine design complex, preparing the **facility** to be its global **powertrain** engineering center.

That, together with previous spending here by the No. 1 automaker, promises to have a profound impact on what for years was a downtrodden, tired old industrial city.

Pontiac is emerging as a big winner in **GM**'s \$2 billion strategy to streamline its Michigan operations. Under that plan, 37,500 salaried workers, once scattered as far north as Saginaw and west to Lansing, are being relocated into six major campuses.

Two are here. The result: new homes and stores and municipal development. In sum, the city has attracted close to \$700 million in new investment since 1993, both by the automaker and private developers.

"I've seen a lot more houses going up, something that didn't happen for years," said Fred Soldiers, a life-long Pontiac resident and retired auto worker. "Downtown Pontiac is a lot more active. It used to be a ghost town."

GM's Pontiac North project calls for a new 400,000-square-foot engineering building adjacent to what served for decades as the headquarters of Pontiac Motor Division. The site along Joslyn, north of Montcalm, is home to 5,400 workers. Another 1,200 engineers will be added by 2005, **GM** says.

Also included is a massive landscaping effort, global reception and visitors center, museum and new roads. **GM** says its goal is to transform a stark industrial center into a setting resembling a college campus. Portions of the 500-acre site might also be sold for use by private developers or key suppliers.

The template for Pontiac North is **GM**'s Centerpoint Business Campus in the city near Interstate 75 and Opdyke. Since 1993, the company and its partner, Etkin Equities Inc. in Southfield, have demolished close to three million square feet of obsolete plants and renovated another 1.4 million square feet of space.

Today Centerpoint houses **GM**'s truck product group, auto suppliers, stores, restaurants and two hotels. A \$44-million Marriott Hotel is scheduled to open in the coming months, along with a private health club and a new \$80-million engineering complex for **GM**.

"Pontiac North won't have all the commercial amenities that Centerpoint has, but it will be a more active and energetic site," said Larry Pitcole, **facility** manager for **GM**'s Southeast Michigan Project Team in Pontiac. "We've also done a complete renovation of the administration and engineering buildings."

GM's capital infusion in Pontiac sits squarely in the center of Oakland County, and borders such communities as Auburn Hills, Bloomfield Township and Waterford Township.

"If you look at an eight-mile radius around downtown Pontiac, the spending capacity is just tremendous," said Gregg McDuffee, director of real estate for SmithGroup Consulting in Detroit, which is overseeing a downtown revitalization study.

"When you add in new high-paying jobs at **GM** and other companies, the upside is tremendous. You have new stores, restaurants and galleries coming downtown, and there's new housing going up in the neighborhoods. That development will accelerate in the future."

The investment has not been lost on Pontiac officials, who are taking measured steps to sell off underutilized property like the former Clinton Valley Center, originally designed as a government services **facility**. They are also examining ways to make the downtown more inviting by redesigning Wide Track Drive, an eight-lane road that encircles the central business district.

Among the prospects:

- * The west portion of Wide Track will be renamed Woodward with traffic likely to travel two ways instead of one. The east section of Wide Track could be converted to two lanes, with the remaining portion removed to expose the Clinton River, which runs below the road.

- * Proposals are expected to be sent out shortly to redevelop or tear down the Pontiac Silverdome, which will lose the Detroit Lions following the 2001 season. The site could become home to another sports team or be demolished to accommodate a corporate or light-industrial campus.

- * The city has received three proposals to redevelop the former Clinton Valley Center, a 228-acre site on the west side, into new and renovated homes, stores and restaurants. A similar process is under way for the so-called southwest quadrant, near Crystal Lake.

A decade ago, new housing construction was largely non-existent in Pontiac, but developers recorded 185 residential permits in each of the last two years. The builders include Crosswinds Communities Inc. in Novi, Pulte Homes of Michigan in Royal Oak and Talon Development Group in Bloomfield Hills.

The 34-block downtown district was built up in the 1920s as the auto industry expanded,

but fell on hard times from 1960 to 1990 because of changing corporate needs and the advent of shopping malls. Now, developers are returning with new stores, restaurants and galleries.

Walter Cohen, principal partner of ARCO Construction Co. in Southfield which purchased the former Pontiac State Bank building in 1998, credits Pontiac's rebirth to steady corporate investment, the strong national economy and a proactive city administration.

Cohen is negotiating to buy the former Sears department store in Pontiac, and plans to convert the five-story, 110,000-square-foot structure on Saginaw into a high-tech building geared to Internet-related firms. The building's location near an Ameritech switching station will offer low-cost connections to fiber-optic lines.

"The business climate is improving and the night life is getting better," Cohen said.

"There are new firms coming in every month and we've increased the occupancy of the Oakland Center (People State Bank) building by 25 percent."

Simulating snow, heat and slick, hairpin curves - New Milford test lab puts vehicles through climate, terrain extremes, without shipping them at an expense.

Detroit News, The (MI) - Tuesday, May 23, 2006

Author: The Detroit News ; Josee Valcourt

MILFORD -- It may be months before Metro Detroiters experience subzero temperatures again, but inside a new \$50 million lab at General Motors Corp.'s Milford proving grounds, engineers can now switch from sweat to chills in mere hours.

The automaker on Monday dedicated a new state-of-the-art vehicle testing **facility** that can create the severest of weather conditions -- from arctic blasts with temperatures at 40 degrees below zero, to stifling desert heat with temperatures as high as 130 degrees.

It is one of the most sophisticated development **facilities** for testing engines and transmissions for cars and trucks in the world, **GM** says.

With the 40,000-square-foot **facility**, the automaker hopes to take some much-needed giant steps and bring new engines and transmissions to market sooner, while spending considerably less on product development.

For example, engineers can now see how driving conditions such as icy roads or extreme humidity affect engine performance, and view the results immediately, without having to ship vehicles to testing destinations such as Canada or Arizona.

"It reduces cost," said Dan Hancock, vice president of engineering operations for **GM Powertrain**.

GM lost \$10.6 billion last year and is in the midst of a major restructuring of its struggling North American operations.

One major focus is to develop lighter, more fuel-efficient powertrains across a smaller family of engines and transmissions. For one, **GM** has been slower than some rivals in introducing six-speed automatic transmissions that can boost fuel efficiency, as well as more powerful four-cylinder and V-6 engines that don't sacrifice fuel economy.

For the 2007 model year, **GM** is introducing 19 new or significantly redesigned engines and transmissions, including a new hybrid system and a fuel-saving V-6 engine.

Using computers and customized software at the new test site, **GM** has created one of the most advanced dynamic road simulators used in the auto industry. **GM** engineers have mapped nearly two dozen mountain and desert roads where customer vehicles are test driven. Climate conditions along with road grades and other conditions have been programmed into computers.

The computer-simulated roads can be "played back" as test vehicles are driven on them. And any of the road conditions can be digitally modified to simulate each of the four seasons, on a single day, if needed.

"As a consumer, you want to hear the transmission shift smoothly whether its 20 degrees or 105 degrees temperature," said Karla Berger, a technical assistant at **GM** .

The **facility** will help **GM** engineers develop and validate future **powertrain** products by allowing testing currently completed on the road to be executed in a controlled, repeatable and climatically robust laboratory environment.

Behind the sliding steel door of dynamic chamber room 35S, 48-inch rollers in the floor can move back and forth and simulate a highway drive, for example.

Adjustable floor tracks can fit different size vehicles, from tiny compacts to hulking Hummer SUVs. A wind tunnel can blast air up to 100 mph. And special ceiling lights can intensely beam to simulate the hottest desert sun.

In addition, engineers will be able to test any type of emissions levels in gasoline, ethanol or diesel fuel, allowing the automaker to better respond to government regulations that vary by country and state, such as environmentally conscious California.

"We have the ability to provide year-round climatic and altitude testing, which greatly improves our vehicle development time," said Hancock, adding the new lab could help cut development time by 4 to 5 months.

In the lab: 4 seasons at a click

GM 's new state-of-the-art engine and transmission test **facility** in Milford is designed to simulate any type of road surface or climate found in the world, year-round. Key features:

Y Capable of achieving temperatures between 40 degrees below zero to 130 degrees

Y Allows humidity and altitude tests from 700 feet below sea level to 12,500 feet

Y Air speeds up to 100 mph

Y Test **facilities** can switch from various climates -- arctic to desert heat -- within several hours.

Y Four static chambers allow stationary vehicles to climatically tested

Caption: A Hummer H3 sits in the test **facility** , which can test the SUV on a variety of simulated terrains. Danny Johnston, **GM** senior lab technician, staffs the control panel at

the automaker's new testing **facility** in Milford, which can simulate climate extremes in which vehicles can be performance-tested.

Exhibit - 31

Summary of General Motors hostile work environment against plaintiff.

General Motors hostile work environment against plaintiff religious beliefs:

- Terri Hostetter attacks plaintiff belief in Creation
- Ward Wiers tries to convert plaintiff away from Roman Catholic Church
- General Motors uses GM suppliers to harass plaintiff belief that abortion is wrong in all situations; Phil and Jim Davies (MTS-PowerTek Farmington Hills, Michigan 48335) – ask plaintiff to name one thing that is always wrong; plaintiff response => Ted; with an aluminum baseball bat looking for Jim
- General Motors uses outside supplier DSP Technology to attack plaintiff silent praying before meal at lunch; contact Gil Troutman
- Jim Thorsen tries to convert plaintiff away from Roman Catholic Church
- General Motors asks plaintiff to prove the existence of God (unknown man); near the end of plaintiff career at General Motors

General Motors hostile work environment against plaintiff career.

- Paul Durrenberg trying to hypnotize the plaintiff.
- Unknown people trying to verbally assaulting the plaintiff.
- General Motors blocks in the plaintiff's car with a group of cars on South bound Mound Road just North of 12 Mile Road.
- Paul Durrenberg (technician supervisor) tampering with the plaintiff's forty-seven mm diesel particulate filter sampling system project
- Jerry Sidlar (instrumentation technician) purposefully gives plaintiff bad information in the Sample Condition Unit project
- Paul Durrenberg purposefully tries to steal plaintiff idea of using a Programmable Logic Controller in the Sample Conditioning Unit project
- Chris Killen (a woman) falsely accuse plaintiff of looking down her blouse and Bob Zuzga (Chris' office partner) is willing to commit perjury to protect Chris from her false accusation
- Paul Durrenberg and Allen Boogaard verbally soliciting plaintiff for oral sex.
- mysteriously one day one Druck pressure transducer is found damaged; even though, it would take a pressure six times the rated full scale to damage the pressure transducer
- M.J. Spi-naz-zi and Bill Whitley try 2 against 1 harassing plaintiff near the Engineering Building, Dynamometer Wing, Chassis Dynamometer Test Cell

- General Motors race baiting the plaintiff and falsely accusing the plaintiff of being racist.
 - Paul Durrenberg and Aaron Trammel (black male) asks plaintiff if he is racist.
 - Roy Harvey (a black male) challenges plaintiff to hit him.
 - Robert Bu-tha-ah (a large black male with the UAW) comes into plaintiff office; stands behind plaintiff; and places a knife to his throat.
 - Janet Austin (a black woman) comes uninvited to the plaintiff's table during lunch and starts to kick plaintiff in the leg.
- General Motors attacks plaintiff family. Plaintiff owned a piece of rental property at 7320 Stout in Detroit, Michigan. Plaintiff rented the property to his sister Gerri. His sister Gerri is cased by an unknown black man and is almost physically assaulted by the black man.
- General Motors steals plaintiff's Handbook of Chemistry and Physics that he won in Chemistry Class at Lawrence Technological University.
- The plaintiff finds a rat in his house - the workers in the Dynamometer Wing nickname was Dyno Rats.

General Motors hostile work environment against plaintiff career - General Motors never awards plaintiff headcount he earned from CY1983 to CY1995; See partial list of head count replacements that should be awarded to the plaintiff

- Jim Daughtery, Doug Newmann, Lee (Denise Wiese's office helper)
- Ward Wiers, Ken Welbaum, Leslie Brown
- Andy McKenzie, Clark Bell, Jim Ka-hill
- David Thatcher, Bob Zuzga, Jim (Dynamometer Wing fuel man)
- Karl Klida, Terry Hostetter, Dennis Bammel
- Denise Wiese, Jim Thorsen, Chris Killeen
- Chris (Denise Wiese's office helper), Tony Schmid-hub-ber

General Motors hostile work environment against plaintiff monetary compensation.

- General Motors delaying the plaintiff's first promotion until approximately September 1, 1985 and awarding the plaintiff a small 10 percent pay raise with the promotion.
- General Motors purposefully not recording the plaintiff's CY1983, CY1984, CY1985, CY1986, CY1987, and CY1988 accomplishments. These include:
 - Humidity Monitoring to help diagnose problem with large printer
 - Forty-Seven mm diesel particulate filter sampling system
 - Sartorius Microbalance
 - Tylan Mass Flow Controllers
 - Sample Conditioning Unit
 - Horiba Chassis Dynamometer Controller
 - Overhead Track System
 - Emission Wing Renovation – Design Coordination
 - Programmable Logic Controllers – integrated into Emissions Analysis Systems
 - Instrumentation Console and Custom Enclosure
 - Emission Test Site Instrumentation Patch Panel
 - 12-Channel Strip Chart Recorder and Custom Enclosure
 - Dew Point Meter and Ambient Temperature Sensor and Custom Enclosure
 - Instrumentation Interfacing
 - Large Temperature and Humidity Display
 - Honeywell HVAC Central Control Station

- Smoke Detector Graphics Display Panel
- Overhead Door Logic Controls
- Emissions Wing Renovation – Project Management
- Software Programming Skills and Software Program Management
- Fuel Meter Calibration Cart
- So much is missing from plaintiff CY1983 to CY1995 personal records that a reader of plaintiff personnel records would get the impression plaintiff had nothing to do with the Emissions Wing renovation and little to do with the Dynamometer Test Cell Renovations.
- The plaintiff did not receive a promotion to 8th level with the Emissions Wing Renovation
- The plaintiff did not receive a promotion to 9th level for Dynamometer Wing Test Cell #13 renovation

Evidence of General Motors continuous pattern compensation discrimination against plaintiff:

<u>Date</u>	<u>SRS Salary</u>	<u>7E06 Mid-point</u>	<u>7E06 Maximum</u>	<u>9th Level > Mid-point</u>
May 01, 1989	\$44,916	Not shown	\$60,840	???
Plaintiff earns his 9 th level with Dynamometer Wing Test Cell #13 renovation				
Sept. 01, 1990	\$47,976	\$52,800	\$63,276	???
Fairbanks / Thorsen recommend plaintiff for 7 th level; Evaluation Dec. 12, 1990				
Sept. 01, 1991	\$52,800	\$55,368	\$66,276	???
Fairbanks / Thorsen recommend plaintiff for 7 th level; Evaluation Jan. 22, 1992				
Plaintiff compensation statement for CY1992 not in personnel records				
Oct. 01, 1993	\$57,432	\$58,200	\$70,500	???
June. 01, 1994	\$61,356	\$59,940	\$73,680	???
June. 01, 1995	\$63,588	\$61,920	\$75,900	???