Exhibit - A

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

County in which action arose Oakland

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Stanley R. Stasko
27653 Lexington Pkwy Southfield, Michigan 48076
#313-670-6917

(b) County of Residence of First Listed Plaintiff Oakland
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Pro Se Litigant

DEFENDANTS

General Motors Corporation
General Motors - Global Headquarters 300 Renaissance Center
P.O. Box 300 Detroit, Michigan 48265

County of Residence of First Listed Defendant Wayne
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. (

Case:2:09-cv-14827
Judge: Cook, Julian Abele
MJ: Morgan, Virginia M
Filed: 12-11-2009 At 04:18 PM
STANLEY STASKO V. GENERAL MOTORS CO
RP (KB)

Cit — Plaintiff
Cit — DEF ☐ 4 ☐ 5

Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881		☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	PROPERTY RIGHTS	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 820 Copyrights	☐ 460 Deportation
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☐ 830 Patent	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health	☐ 840 Trademark	☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other		☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	LABOR	SOCIAL SECURITY	☐ 810 Selective Service
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability			☐ 720 Labor/Mgmt. Relations	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise			☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 863 DIWC/DIWW (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 740 Railway Labor Act	☐ 864 SSID Title XVI	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence	☒ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 892 Economic Stabilization Act
☐ 220 Foreclosure	☐ 442 Employment	Habeas Corpus:	☐ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/ Accommodations	☐ 530 General	IMMIGRATION	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 894 Energy Allocation Act
☐ 240 Torts to Land	☐ 444 Welfare	☐ 535 Death Penalty	☐ 462 Naturalization Application	☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 540 Mandamus & Other	☐ 463 Habeas Corpus - Alien Detainee		☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	☐ 550 Civil Rights	☐ 465 Other Immigration Actions		☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights	☐ 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title 42 USC Section 1983

Brief description of cause:
I an suing General Motors under Title 42 USC Section 1983

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ APPROX. $2.7 MILLION

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/11/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed? ☐ Yes ☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.) ☐ Yes ☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

STANLEY R STASKO
27653 Lexington Pkwy Southfield, Michigan 48076
#313-670-6917
Plaintiff
Pro Se Litigant

V

Case:2:09-cv-14827
Judge: Cook, Julian Abele
MJ: Morgan, Virginia M
Filed: 12-11-2009 At 04:18 PM
STANLEY STASKO V. GENERAL MOTORS CO
RP (KB)

GENERAL MOTORS CORPORATION
GENERAL MOTORS – GLOBAL HEADQUARTERS
300 RENAISSANCE CENTER
P.O. BOX 300
DETROIT, MICHIGAN 48265
#313-556-5000
Defendant

COMPLAINT:

Stanley R. Stasko respectfully states:

1) that I am the Plaintiff in Stasko vs General Motors Corporation.

2) that there is no other pending or resolved civil action arising out of this complaint at the signing date of this complaint.

JURISDICTION

3) that the events giving rise to this complaint occurred at what is commonly known as the General Motors Technical Center (Warren, Michigan) Macomb County from approximately September 7, 1978 to approximately August 14, 1979, and from approximately July 18, 1983 to approximately August 25, 1995

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Southfield, Michigan 48076 Telephone # 313-670-6917

4) that the plaintiff resided at what is commonly known as 4450 52nd Street (Detroit, Michigan) Wayne County while employed at the General Motors Technical Center from approximately September 7, 1978, to approximately August 14, 1979.

5) that the plaintiff resided at what is commonly known as 4450 52nd Street (Detroit, Michigan) Wayne County while employed at the General Motors Technical Center from July 18, 1983, to approximately May, 1985

6) that the plaintiff resided in Oakland County (Southfield, Michigan) while employed at the General Motors Technical Center from approximately May, 1985 to approximately August 25, 1995

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

7) Title 42 USC Section 1983 states "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory degree was violated or declaratory relief was unavailable." (See Exhibit 1)

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STATATUE OF LIMITATIONS

8) Title 42 USC Section 1983 does not specify a statute of limitations for recovery of damages by an employee from an employer. M.C.L.A. 600.5807 (8) states that "the period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract." (See Exhibit 2)

9) Defendant may argue that the statute of limitations has expired for the plaintiff to recover damages from an employer since the plaintiff resigned from General Motors Corporation on August 25, 1995. (See Exhibit 3) August 25, 1995 plus six years equals August 25, 2001.

TOLLING OF LIMITATIONS – METHOD #1 – DISCOVERY DELAYS

10) According to Campau v Orchard Hills Psychiatric Center 946 F.Supp. 507, 19A.D.D. 1056, E.D. Mich., November 19, 1996 (No. Civ. A.96-40310) the discovery rule postpones beginnings of limitations period from date when plaintiff is wronged to date when he discovers he has been injured (See Exhibit 4)

11) Other State of Michigan court rulings include Stephens v. Dixon, 536 N.W.2d 755 Mich.,1995 (See Exhibit 5) "in deciding whether to strictly enforce period of limitation or impose discovery rule, court must carefully balance when plaintiff learned of her injuries, whether she was given fair opportunity to bring her suit, and whether defendant's equitable interests would be unfairly prejudiced by tolling statute of limitations. M.C.L.A. § 600.5827."

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12) Also Moll v. Abbott Laboratories, 506 N.W.2d 816 Mich.,1993 (See Exhibit 5) "...once plaintiff is aware of injury and its possible cause, plaintiff is aware of possible cause of action for purposes of commencement of statute of limitations."

13) Further, City of Huntington Woods v. Wines, 332 N.W.2d 557 Mich.App.,1983 (See Exhibit 5) "...limitation period commences when the person knows of the act which caused his injury and has good reason to believe that the act was improper or was done in an improper manner."

14) Still further, Jackson County Hog Producers v. Consumers Power Co., 592 N.W.2d 112 Mich.App.,1999 (See Exhibit 5) "...if the discovery rule applies, a claim does not accrue for the purpose of the running of the limitation period until a plaintiff discovers, or through the exercise of reasonable diligence should have discovered (1) an injury and (2) the causal connection between the injury and a defendant's breach of duty."

15) Rose v Saginaw County, 232 F.R.D. 267, E.D. Mich., November 21, 2005 (No. 01-10337-BC). "...if the plaintiff has delayed beyond the limitations period, he must fully plead the facts and circumstances surrounding his belated discovery and the delay" (See Exhibit 6)

16) The plaintiff submits an essay fully describing the facts and circumstances surrounding the belated discovery and the delay. (See Exhibit 7)

17) The plaintiff first began to discover the injury and loss he incurred by the defendant when the plaintiff for the first time requested a complete copy of all employment records

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pertaining to his work for General Motors Corporation on July 20, 2005. (See Exhibit 10).

18) The defendant did not respond to the letter dated July 20, 2005.

19) The plaintiff made a second request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 8, 2005. (See Exhibit 11).

20) The defendant did not respond to the second request letter dated August 8, 2005.

21) The plaintiff made a third request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 24, 2005. (See Exhibit 12).

22) The defendant responded by mailing a package of information to the plaintiff FedEx Trk # 8464-9619-6310. (See Exhibit 13) The plaintiff includes the evaluation and salary compensation information in Exhibit 13.

23) The plaintiff's employment record from General Motors Corporation is the first and only time the plaintiff received employment records from the defendant.

24) The discovery rule postpones beginnings of limitations period from date when plaintiff is wronged to date when he discovers he has been injured; therefore, since the plaintiff first began to discover the injury and loss he incurred by the defendant on September 1, 2005; therefore, the statue of limitations does not expire until September 1, 2011. (September 1, 2005 plus six years equals September 1, 2011.)

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TOLLING OF LIMITATIONS – METHOD #2 – MENTAL DISABILITY

25) M.C.L.A. 600.5851 (1) states ... "if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run." (See Exhibit 17)

26) Also M.C.L.A. 600.5851 (2) states "the term insane as employed in this chapter means a condition of mental derangement such as to prevent the sufferer from comprehending rights he or she is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane." (See Exhibit 17)

27) The plaintiff submits an essay fully describing the facts and circumstances surrounding his **loss of memory**. See Essay, Exhibit 7, p. 33-37.

28) The plaintiff's loss of memory continued for years including other people trying to convince the plaintiff he needs to be on medication.

   a) See Essay, Exhibit 7, p. 48-63

   b) See North Oakland Medical Center report in Exhibit 8.

   c) See Essay, Exhibit 7, p. 64-65

29) Further M.C.L.A. 600.5851 (3) states "to be considered a disability, the infancy or insanity must exist at the time the claim accrues. If the disability comes into existence after the claim has accrued, a court shall not recognize the disability under this section for the purpose of modifying the period of limitations." (See Exhibit 17)

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30) Still further M.C.L.A. 600.5851 (5) states "... a court shall count the year of grace provided in this section from the termination of the last disability to the person to whom the claim originally accrued that has continued from the time the claim accrued, whether this disability terminates because of the death of the person disabled or for some other reason." (See Exhibit 17)

31) The plaintiff's memory only starts to clear up in July 2005. (See Essay, Exhibit 7, p. 65-67) In order for the court to understand how much the plaintiff's memory will clear up several years later, Exhibit 15 represents the plaintiff's resume for General Motors accomplishments in CY2005 and Exhibit 16 represents the plaintiff's resume for General Motors accomplishments written approximately October CY2009.

32) If the defendant argues that the plaintiff resigned from General Motors Corporation on August 25, 1995; therefore, the plaintiff's mental disability (loss of memory) is over fourteen years old. The court should note that Calladine v Dana Corp. 679 F.Supp. 700, E.D. Mich., February 29, 1988 (No. Civ. A. 87-CV-1739DT) states "...that an individual mentally incompetent at the time a cause of action accrues may file the claim before the applicable limitations period runs *after* the disability is removed. Since William remains mentally incompetent, the statute has not begun to run even though the injury occurred almost nine years prior to the filing of this suit" (See Exhibit 18 for Calladine v Dana Corp.)

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33) Also *Paavola v. St. Joseph Hosp. Corp.*, 119 Mich.App. 10, 14-15, 325 N.W.2d 609 (1982) states that the "... statute permits tolling for a "period potentially many decades long." (See Exhibit 19 for Paavola v St. Joseph Hosp. Corp.)

34) Further if the defendant argues that the plaintiff should have appointed a guardian or obtained an attorney to capably handle the plaintiff's rights when the plaintiff first began to discovery the injury or loss approximately September 2005 similar to the argument made in Calladine v Dana Corp. ("... In other words, asserts Dana, William has been in a far better position legally than the average individual who must attend to his or her legal rights without such assistance."; See Exhibit 18 for Calladine v Dana Corp.) The plaintiff states that he is a single man with no spouse. The plaintiff has no legal children. The plaintiff did try to obtain an attorney when he first began to discover the injury or loss approximately September 2005 but the attorney showed no interest in the case, nor did the attorney return the plaintiff's phone calls, once the attorney learned that the plaintiff resigned from General Motors Corporation on August 25, 1995 (ten years ago).

35) Still further, Calladine v Dana Corp. states that "... Michigan courts have consistently held otherwise. In a string of decisions, the Michigan Court of Appeals has found that the statute does not begin to run even with the appointment of a guardian, *see, e.g.*, *Wallisch v. Fosnaugh*, 126 Mich.App. 418, 426, 336 N.W.2d 923 *leave to appeal denied*, 418 Mich. 871 (1983); *Paavola*, 119 Mich.App. at 14, 325 N.W.2d 609, or next friend, *Rittenhouse v. Erhart*, 126 Mich.App. 674, 679, 337 N.W.2d 626 (1983), *modified on*

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other grounds, 424 Mich. 166, 380 N.W.2d 440 (1986), on behalf of a mentally incompetent person. (Exhibit 18 for Calladine v Dana Corp.)

36) If the defendant argues that the plaintiff's did not have a mental disability because he was able to work for DSP Technology in Ann Arbor, Michigan and MSX International in Auburn Hills, Michigan covering a period a time from approximately January 1997 to February 2001. The court should note that Asher v. Exxon Co., U.S.A., 504 N.W.2d 728 Mich.App.,1993 states "... 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)." (See Exhibit 20 for Asher v Exxon Co.)

37) M.C.L.A. 600.5851 (5) shall count the year of grace from the termination of the last disability and since the plaintiff's loss of memory will clear up enough for the plaintiff to represent himself in court approximately October CY2009; therefore, the statue of limitations does not expire until October 2010. (October 2009 plus one year equals October 2010.)

TOLLING OF LIMITATIONS – METHOD #3 – FRAUDULENT CONCEALMENT

38) M.C.L.A. 600.5855 "... 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

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person who is liable for the claim, although the action would otherwise be barred by the period of limitation." (See Exhibit 21 for M.C.L.A. 600.5855)

39) McCray v Moore (Not reported in F.Supp. 2d, 2008 WL 4225762), U.S. District Court, E.D. Mich., No. 07-13297, September 9, 2008 states "... 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:" (See Exhibit 22 for McCray v Moore)

40) Further McCray v Moore states "... *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)*." (See Exhibit 22 for McCray v Moore)

41) Lumber Village v Siegler, 355 N.W.2d 654 states "...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)" (See Exhibit 23 for Lumber Village v Siegler)

42) The plaintiff for the first time requested a complete copy of all employment records pertaining to his work for General Motors Corporation on July 20, 2005. (See Exhibit 10).

43) The defendant did not respond to the letter dated July 20, 2005.

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Southfield, Michigan 48076 Telephone # 313-670-6917

44) The plaintiff made a second request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 8, 2005. (See Exhibit 11).

45) The defendant did not respond to the second request letter dated August 8, 2005.

46) The plaintiff made a third request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 24, 2005. (See Exhibit 12).

47) The court should note that in the third request the plaintiff states "Stanley R. Stasko requests this information to: ... (3) look for possible discrimination by General Motors against Stanley R. Stasko (it is Stanley R. Stasko opinion that he can compile a reasonable argument that he should have been one or more levels higher than he was at the time of his departure)."

48) The court should also note that in the third request the plaintiff states "... please note that a copy of this letter is being sent to: Dan Galnat, Attorney, General Motors – Global Headquarters..."

49) Now that the plaintiff has implied a possible lawsuit, the defendant responded by mailing a package of information to the plaintiff FedEx Trk # 8464-9619-6310. (See Exhibit 13) The plaintiff includes the evaluation and salary compensation information in Exhibit 13.

50) Since the plaintiff was hired by General Motors on July 18, 1983 and resigned on August 25, 1995, it is reasonable to expect performance evaluation forms for CY1983, CY1984,

CY1985, CY1986, CY1987, CY1988, CY1989, CY1990, CY1991, CY1992, CY1993, CY1994, and CY1995

51) The information from the defendant (FedEx Trk # 8464-9619-6310) contained only three Advanced Engineering Staff Performance planning and Development Process information forms.

a) One Advanced Engineering Staff Performance Planning Development Process information dated December 22, 1989, by Stanley R. Stasko

b) One Advanced Engineering Staff Performance Planning Development Process information dated December 19, 1990, by Stanley R. Stasko

c) One Advanced Engineering Staff Performance Planning Development Process information dated January 22, 1992 by Stanley R. Stasko

52) The plaintiff did try to obtain an attorney when he discovered so little of his accomplishments from CY1983, CY1984, CY1985, CY1986, CY1987, CY1988, CY1989, CY1990, CY1991, CY1992, CY1993, CY1994, and CY1995 were documented by the defendant.

53) The attorney showed no interest in the case, nor did the attorney return the plaintiff's phone calls, once the attorney learned that the plaintiff resigned from General Motors Corporation on August 25, 1995 (ten years ago).

54) The plaintiff's memory only starts to clear up in July 2005. (See Essay, Exhibit 7, p. 65-67) In order for the court to understand how much the plaintiff's memory will clear up several years later, Exhibit 15 represents the plaintiff's resume for General Motors

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Southfield, Michigan 48076 Telephone # 313-670-6917

accomplishments in CY2005 and Exhibit 16 represents the plaintiff's resume for General Motors accomplishments written approximately October CY2009.

55) M.C.L.A. 600.5855 states "... 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 limitation."; therefore, since the plaintiff was able to first represent himself in court approximately October CY2009; therefore, the statue of limitations does not expire until October 2011. (October 2009 plus two years equals October 2011.)

PLAINTIFF'S REQUESTS

56) The plaintiff requests a three-judge court decide Stasko v General Motors Corporation.

57) The plaintiff requests the court to award the plaintiff approximately $2.7 million dollars for the estimated loss by the plaintiff for actual work performed at General Motors Corporation from approximately July 1983 to August 1995. (Final amount to be determined by court.) See Exhibit 24, Exhibit 25, Exhibit 26, and Exhibit 27 for calculations and estimates associated with plaintiff's $2.7 million dollar estimated loss.

58) The plaintiff requests the court to award the plaintiff an unspecified amount for unique solution accomplished by the plaintiff while working at General Motors Corporation

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Southfield, Michigan 48076 Telephone # 313-670-6917

from approximately July 1983 to August 1995. (Final amount to be determined by court.) (See Exhibit 28)

59) The plaintiff requests the court to award the plaintiff an unspecified amount for major accomplishments by the plaintiff while working at General Motors Corporation from approximately July 1983 to August 1995. (See Exhibit 29) (Final amount to be determined by court.) (Also see Exhibit 30 for news articles announcing General Motors Powertrain facility projects and the costs associated with major Powertrain facility projects.)

60) The plaintiff requests the court to award the plaintiff an unspecified amount in punitive damages for hostile work environment by defendant against the plaintiff from approximately July 1983 to August 1995. (See Exhibit 31) (Final amount to be determined by court.)

Date: December 11, 2009 ----------

Stanley R. Stasko #313-670-6917

Document prepared by Stanley R. Stasko 27653 Lexington Pkwy
Southfield, Michigan 48076 Telephone # 313-670-6917

Exhibit - 1

Note 249

249. Statistical evidence, leasing and renting real property

Resident manager's statement to black rental applicant that corporate landlord did not rent to blacks together with evidence that corporate landlord refused to rent black applicant any of ten available apartments together with statistical evidence indicating that corporate landlord had never rented to a black until December 1975 and had rented very few of the 159 apartments to blacks since then was sufficient to establish that black rental applicant was denied an apartment by landlord because of her race. Young v. Parkland Village, Inc., D.C.Md.1978, 460 F.Supp. 67.

Uncontradicted evidence that landlords rented apartment to black tenant who charged racial discrimination and that 87% of landlords' apartment units were occupied by black persons established no violation of this section. Lee v. Minnock, W.D.Pa.1976, 417 F.Supp. 436, affirmed 556 F.2d 567.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub.L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104–317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1979 Acts. House Report No. 96–548, see 1979 U.S. Code Cong. and Adm. News, p. 2609.

1996 Acts. Senate Report No. 104–366, see 1996 U.S. Code Cong. and Adm. News, p. 4202.

Codifications

R.S. § 1979 is from Act Apr. 20, 1871, c. 22, § 1, 17 Stat. 13.

Section was formerly classified to section 43 of Title 8, Aliens and Nationality.

Amendments

1996 Amendments. Pub.L. 104–317, § 309(c), inserted provisions relating to immunity of judicial officers from injunctive relief unless declaratory decree was violated or declaratory relief is unavailable.

1979 Amendments. Pub.L. 96–170 added "or the District of Columbia" following "Territory," and provisions relating to Acts of Congress applicable solely to the District of Columbia.

Effective and Applicability Provisions

1979 Acts. Amendment by Pub.L. 96–170 applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub.L. 96–170, set out as a note under section 1343 of Title 28, Judiciary and Judicial Procedure.

CROSS REFEREN(

Attorney's fees to prevailing party other than Ur
Citizenship clause, see USCA Const. Amend. XIV
Conspiracy to interfere with civil rights, damage
Institutionalized persons required to exhaust re this section, see 42 USCA § 1997e.
Jurisdiction of district courts of civil rights actio
Privileges and immunities clauses, see USCA Cc XIV, § 1.

AMERICAN LAW REI

Assignability and survivability of cause of actior ALR2d 1153.
Civil Rights: racial or religious discriminatior services or facilities. 53 ALR3d 1027.
Discrimination in provision of municipal ser violation. 51 ALR3d 950.
Exclusion of, or discrimination against, phys ALR5th 107.
Exclusion or expulsion from association or clu act. 38 ALR4th 628.
Liability of municipal corporation or other gove caused by action or inaction of off-du
Prohibition, under state civil rights laws, of privately owned residential property. 96 A
Requiring apology as 'affirmative action' or othe rights Act. 85 ALR3d 402.
Search conducted by school official or teacher or equivalent state constitutional provisio
Action of private hospital as state action unde Amendment. 42 ALR Fed 463.
Action of private institution of higher educati action under color of law, for purposes USCA § 1983. 37 ALR Fed 601.
Action of private organization providing legal a within 42 USCA § 1983. 49 ALR Fed 955
Action under 42 USCA § 1983 against mental i institutionalized person. 118 ALR Fed 51
Action under Title VII of 1964 Civil Rights A precluding action under 42 USCA § 1983 state or local government. 78 ALR Fed 49
Actionability of malicious prosecution under 42
Actionability under Federal Civil Rights Acts, plaining party's association with persons 6 ALR Fed 973.
Actionability under Federal Civil Rights Act discipline attorney, to regulate admissio unauthorized practice of law. 9 ALR Fed
Actionability, under 42 USCA § 1983, of claim election. 66 ALR Fed 750.
Actionability, under 42 USCA § 1983, of claim officers for unlawful arrest or imprisonm
Actions brought under 42 U.S.C.A. § § 1981 Supreme Court cases. 164 ALR Fed 483
Actions brought under 42 U.S.C.A. §§ 1983 a Supreme Court cases. 169 ALR Fed 141
Actions of off-duty policeman acting as privat color of state law' actionable under C. § 1983). 56 ALR Fed 895.

Exhibit - 2

M.C.L.A. 600.5807

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)
➡600.5807. Damages for breaches of contract; specific performance; fiduciary bonds; deeds; mortgages; surety bonds; appeal bonds; public obligations

Sec. 5807. No person may bring or maintain any action to recover damages or sums due for breach of contract, or to enforce the specific performance of any contract unless, after the claim first accrued to himself or to someone through whom he claims, he commences the action within the periods of time prescribed by this section.

(1) The period of limitations on actions charging any surety on any bond of any executor, administrator, guardian is 4 years after the discharge of the executor, administrator, or guardian.

(2) The period of limitations is 10 years for actions founded upon bonds of public officers.

(3) The period of limitations on actions founded upon bonds executed under sections 41.80 and 41.81 of the Compiled Laws of 1948, is 2 years after the expiration of the year for which the constable was elected.

(4) The period of limitations is 10 years for actions founded upon covenants in deeds and mortgages of real estate.

(5) The period of limitations is 2 years for actions charging any surety for costs.

(6) The period of limitations is 2 years for actions brought on bonds or recognizances given on appeal from any court in this state.

(7) The period of limitations is 10 years for actions on bonds, notes, or other like instruments which are the direct or indirect obligation of, or were issued by although not the obligation of, the state of Michigan or any county, city, village, township, school district, special assessment district, or other public or quasi-public corporation in the state of Michigan.

→ (8) The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract.

Exhibit - 3

ISSUED: 07-27-95

SALARIED PERSONNEL TRANSACTION

GM-215/IAD

NAME------: STANLEY R STASKO SSN: 381-68-1710

ADDRESS--: 27653 LEXINGTON PKWY
SOUTHFIELD, MI 48076

BIRTHDATE: 06-06-61 SEX/MINORITY----: M NON-MINORITY
PERF/DATE: S 01-22-92 CREDITED SERVICE: 11 YRS 06 MOS

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

********** CURRENT 07-18-83	********** S T A T U S **********	RECOMMENDED 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
	LOCAL NUMBER
	LOCAL TITLE
10020 GM POWERTRAIN-WRN ENG	PERSONNEL UNIT
WH213 LAB SUPERVISOR/ENGINE	DEPARTMENT
2130 WARREN MI	LOCATION CODE
03 2 F N	AOW/EEO/EXPT/SUPV
5110000 GM POWERTRAIN-WARREN	AAP FACILITY

********** C O M P E N S A T I O N ********** 06-01-95		
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):

********** S I G N A T U R E S O F A U T H O R I Z A T I O N **********

APPROVAL/DATE: G.M. Gerald A. Fauble / 8-1-95 Bruce E. Holmes / 8-1-95

APPROVAL/DATE: _____ / _____ _____ / _____

APPROVAL/DATE: _____ / _____ _____ / _____

Prism Approved on Ufa on 8/1/95 mjs

Exhibit - 4

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

Thomas A. CAMPAU, Plaintiff,
v.
ORCHARD HILLS PSYCHIATRIC CENTER, a Michigan Professional Corporation, Kenneth E. Pitts and Hiten C. Patel, Jointly and Severally, Defendants.

Civil Action No. 96-40310.
Nov. 19, 1996.

Employee brought Americans with Disabilities Act (ADA) claim against his former employer. Employer moved to dismiss. The District Court, Gadola, J., held that: (1) employee's claim accrued on date he discovered he was going to be terminated, and (2) limitations period for filing claim with Equal Employment Opportunity Commission (EEOC) was not tolled until date employee "confirmed" that his alcoholism was cause for termination.

Dismissed.

West Headnotes

[1] KeyCite Citing References for this Headnote

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1505 Time for Proceedings; Limitations
78k1505(3) k. Operation; Accrual and Computation. Most Cited Cases
(Formerly 78k342)

Statutory period for filing discrimination charge with Equal Employment Opportunity Commission (EEOC) begins to run on date that the employee receives notice of termination, not when his employment actually ceases. Civil Rights Act of 1964, § 706(d), as amended, 42 U.S.C.A. § 2000e-5(e).

[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(1) k. In General; What Constitutes Discovery. Most Cited Cases

Discovery rule postpones beginning of limitations period from date when plaintiff is wronged to date when he discovers he has been injured.

[3] KeyCite Citing References for this Headnote

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1505 Time for Proceedings; Limitations
78k1505(3) k. Operation; Accrual and Computation. Most Cited Cases
(Formerly 78k342)

If employer decides to terminate employee for allegedly discriminatory reason but does not convey to employee decision to terminate him until later date, limitations period begins to run on date that employee is notified of his termination and not on date that decision to terminate is made.

[4] KeyCite Citing References for this Headnote

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1505 Time for Proceedings; Limitations
78k1505(3) k. Operation; Accrual and Computation. Most Cited Cases
(Formerly 78k182)

It is employee's awareness of actual injury, as opposed to legal injury, that suffices to trigger running of limitations period for bringing ADA claim. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[5] KeyCite Citing References for this Headnote

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1505 Time for Proceedings; Limitations
78k1505(3) k. Operation; Accrual and Computation. Most Cited Cases
(Formerly 78k182)

Employee's ADA claim accrued on date he was notified he was being terminated. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[6] KeyCite Citing References for this Headnote

241 Limitation of Actions
241II Computation of Period of Limitation
241II(G) Pendency of Legal Proceedings, Injunction, Stay, or War
241k104.5 k. Suspension or Stay in General; Equitable Tolling. Most Cited Cases

Equitable tolling permits plaintiff to avoid bar of statute of limitation if, despite all due diligence, he is unable to obtain vital information bearing on existence of claim.

[7] KeyCite Citing References for this Headnote

241 Limitation of Actions
241II Computation of Period of Limitation
241II(G) Pendency of Legal Proceedings, Injunction, Stay, or War
241k104.5 k. Suspension or Stay in General; Equitable Tolling. Most Cited Cases

Equitable tolling is inappropriate if plaintiff has either actual or constructive knowledge of his rights.

[8] KeyCite Citing References for this Headnote

78 Civil Rights
78IV Remedies Under Federal Employment Discrimination Statutes
78k1503 Administrative Agencies and Proceedings
78k1505 Time for Proceedings; Limitations
78k1505(6) k. Tolling. Most Cited Cases
(Formerly 78k182)

Limitations period for employee to file ADA claim with Equal Employment Opportunity Commission (EEOC) was not tolled for seven-month period between time employee allegedly learned he was discharged due to perceived handicap of alcoholism and date when he confirmed that alcoholism was the reason. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[9] 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

Equitable estoppel arises when defendant takes active steps, above and beyond wrongdoing upon which plaintiff's claim is founded, to prevent claimant from suing in time.

*508 Thomas R. Paxton, Eggenberger, Eggenberger, McKinney, Weber and Hofmeister, Detroit, MI, for Plaintiff.

Sheldon A. Fealk, Couzens, Lansky, Ellis, Roeder and Lazar, Farmington Hills, MI, for Defendants.

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

GADOLA, District Judge.

Before this court is the defendants', Orchard Hills Psychiatric Center, Kenneth E. Pitts and Hiten C. Patel, motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) filed on September 16, 1996. For the reasons set forth below, this court will grant the defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. Background

Plaintiff, Thomas Campau ("Campau"), was employed by defendant Orchard Hills Psychiatric Center ("OHPC") and defendants Kenneth E. Pitts ("Pitts") and Hiten C. Patel ("Patel") who were officers and managers at OHPC and were the employers of Campau. (collectively "Defendants") Campau was employed by OHPC as an independent contractor [FN1] in the position of Clinical Social Worker. On April 4, 1995, the defendants sent a letter to Campau which stated that they "[would] not require [his] services as an independent contractor after Friday, August 4, 1995." Accordingly, Campau's last day of work was August 4, 1995.[FN2] On or about September 4, 1995, Campau filed a lawsuit in Oakland County Circuit court against the defendants in this proceeding alleging wrongful discharge and retaliatory discharge.[FN3] During discovery in the state court action, Campau took the deposition testimony of Drs. Patel and Pitts on November 14, 1995 and February 2, 1996, respectively. Campau claims that their testimony revealed that he was dismissed, at least in part, based on the doctors' perception that Campau was an alcoholic. On or about February 23, 1996, Campau filed a motion for leave to amend the Circuit court complaint to allege violations of Michigan Handicappers Civil Rights Act ("MHCRA"). In the amended complaint, Campau sought to allege that he was fired because of the defendants' perception of his mental or physical condition, i.e. that Campau was an alcoholic. The motion to amend was denied on March 13, 1996 by the Honorable Robert C. Anderson, Circuit Judge, who stated that "my reading of the file does not indicate to me-and of your briefs and what's been submitted to me that there's enough merit to warrant going any further on that amended Complaint." On April 29, 1996, the entire Circuit court matter was dismissed, with prejudice, as plaintiff conceded that discovery had revealed that there was no basis for his wrongful discharge or breach of contract claims. Campau has appealed that dismissal but not the state court's denial of his motion to amend the complaint. Thereafter, on June 11, 1996, the plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC").

FN1. The issue of whether Campau was an independent contractor and if so, whether he was protected under the Americans with Disabilities Act ("ADA"), *infra,* was not raised by the parties in their briefs. Although the parties, at oral argument on November 6, 1996, stated that that issue is in dispute, this court need not reach that issue, since it will grant the defendants' motion to dismiss for failure to exhaust administrative remedies.

FN2. Despite the fact that Campau's last day of actual work was Friday August 4, 1995, Campau, in his EEOC Notice of Charge of Discrimination, claims Sunday August 6, 1995 as his last day. As more fully discussed below, Campau's last day of work, for purposes of this motion to dismiss, is irrelevant. The relevant date is April 4, 1995, the day Campau was notified of his termination. As such, any dispute as to Campau's last day of work is moot.

FN3. The basis of plaintiff's wrongful discharge and retaliatory discharge claims was that Campau was allegedly terminated in retaliation for the defendants having to defend Campau in a malpractice suit by his former patient. That action against Campau was ultimately dismissed with prejudice.

On August 27, 1996, Campau filed suit in this court alleging a violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. Campau claims that he was fired due to a perceived handicap, to wit: *509 alcoholism. On September 16, 1996, the defendants brought the instant motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). The defendants argue that Campau has failed to exhaust his administrative remedies by failing to timely file a claim with the EEOC and that dismissal is, therefore, appropriate pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(1) as this court lacks subject matter jurisdiction. Alternatively, the defendants argue that the instant complaint should be dismissed pursuant to 12(b)(6) based on the doctrines of res judicata and collateral estoppel. The defendants contend that the instant ADA claims are the same allegations as the MHCRA claims which were asserted in plaintiff's state court motion to amend the complaint and which were subsequently denied by the Circuit court on the "merits." This court heard oral argument on November 6, 1996.

II. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) authorizes the district courts to dismiss any complaint which fails "to state a claim upon which relief can be granted." Rule 12(b)(6) affords a defendant an opportunity to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true. In applying the standards under Rule 12(b)(6), the court must presume all well-pleaded factual allegations in the complaint to be true and draw all reasonable inferences from those allegations in favor of the non-moving party. *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir.1993); *Miller v. Currie*, 50 F.3d 373, 377 (6th Cir.1995). The court need not, however, accord the presumption of truthfulness to any legal conclusion, opinions or deductions, even if they are couched as factual allegations. *Western Mining Council v. Watt*, 643 F.2d 618, 629 (9th Cir.1981); *Mitchell v. Archibald & Kendall, Inc.*, 573 F.2d 429, 432 (7th Cir.1978); *Sexton v. Barry*, 233 F.2d 220, 223 (6th Cir.1956). Dismissal for failure to state a claim is disfavored:

> [A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). *See also Cameron v. Seitz*, 38 F.3d 264, 270 (6th Cir.1994) (stating that a motion to dismiss should be denied unless "it is clear that the plaintiff can prove no set of facts in support of [its] claim that would entitle [it] to relief.").

III. Analysis

1. Failure to Exhaust Administrative Remedies

At the outset, it should be noted that while the defendants correctly argue that Campau's failure to exhaust his administrative remedies, by failing to timely file a charge of discrimination with the EEOC, is a proper ground for dismissal, they incorrectly argue that such a dismissal should be made pursuant to FRCP 12(b)(1) based on this court's lack of subject matter jurisdiction. The United States Supreme Court, in *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393, 102 S.Ct. 1127, 1132, 71 L.Ed.2d 234, 243 (1982), held that "filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling." *See also Wright v. Tennessee*, 628 F.2d 949, 953 (6th Cir.1980). Accordingly, this court will find that Campau's complaint should be dismissed for failure to exhaust administrative remedies pursuant to FRCP 12(b)(6).

The ADA allows a plaintiff to bring suit within 180 days after the alleged act of discrimination. However, if the plaintiff initially filed a complaint with a state or local Fair Employment Practice agency ("FEP Agency") with authority to adjudicate the claim, he or she is allotted 300 days from the date of the alleged discrimination within which to file a charge of employment discrimination with the EEOC. 42 U.S.C. § 2000e-5(e).[FN4] *510 Moreover, in a deferral state, such as Michigan, where there is an agreement between the EEOC and the FEP agency to permit a claimant to file a charge with the EEOC in lieu of first filing with the FEP agency, a filing with the EEOC is timely if it is done within 300 days of the alleged violation even if the claimant does not first file with a state or local agency. *See* 29 C.F.R. § 1601.13.[FN5]

FN4. 42 U.S.C. § 2000e-5(e) states, in pertinent part:A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred ... except that in a case of unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred....

FN5. 29 C.F.R. § 1601.13 provides, in pertinent part, that:(c) *Agreements with Fair Employment Practice agencies.* Pursuant to section 705(g)(1) and section 706(b) of title VII, the Commission shall endeavor to enter into agreements with FEP agencies to establish effective and integrated resolution procedures. Such agreements may include, but need not be limited to, cooperative arrangements to provide for processing of certain charges by the Commission, rather than by the FEP agency during the period specified in section 706(c) and section 706(d) of title VII.

[1] It is well-settled that the statutory period for filing an EEOC charge begins to run on the date that a plaintiff receives notice of termination, not when his employment actually ceases. *See Janikowski v. Bendix Corp.*, 823 F.2d 945, 947 (6th Cir.1987) (citing cases). In the instant case, notwithstanding Campau's "discovery rule" and equitable tolling arguments to the contrary, *see* discussion *infra,* the statutory period began to run on April 4, 1995, the day that Campau was notified that he would be terminated effective August 4, 1995.[FN6] As such, an EEOC charge was required to be filed by January 29, 1996 which is 300 days from April 4, 1995, the day Campau was notified of his termination. Since plaintiff only filed his EEOC charge on June 11, 1996, that filing was untimely and the instant complaint should be dismissed, pursuant to 12(b)(6) for failure to exhaust administrative remedies.

FN6. Although counsel for the defendants argued at oral argument that Sixth Circuit caselaw prescribes that the statutory period begins to run upon notice of termination, not when employment ceased, counsel has nevertheless acquiesced to use August 6, 1996, the date that Campau wrote on his EEOC complaint as his last day of work, as the beginning of the statutory period. Irrespective of what counsel is willing to concede, this court is not prepared to do the same and finds that the statutory period started to run on April 4, 1995.

Campau, however, contends that the statutory 300-day limit should be "equitably tolled" because he was unable to "discover" facts sufficient to allege a claim under the ADA until the depositions of Drs. Patel and Pitts. Specifically, Campau argues that because he did not know that the defendants allegedly perceived that Campau was an alcoholic until February 23, 1996, the date of Dr. Pitts' deposition, the statutory time limit should be tolled and should not begin to run until that date. In that deposition, Campau argues, Dr. Pitts " *confirmed* [that] ... Mr. Campau's alcoholism was a substantial factor in the decision to terminate the plaintiff." (emphasis added). Alternatively, Campau argues that the statutory time limit should be tolled until November 14, 1995, the date of Dr. Patel's deposition, when Campau claims he became aware that "a reason for [Dr. Patel's] decision to terminate [Campau] was his perception of [Campau's] alcoholism." (emphasis supplied by Campau). Campau concludes that by applying "equitable tolling" to either date, Campau falls within the 300 day filing deadline because he filed on June 11, 1996 which is still less than 300 days after either the November 14, 1995 deposition or the February 2, 1996 deposition.

It is apparent, however, that Campau has confused two closely related doctrines, namely, the discovery rule and equitable tolling. In addition, Campau misapprehends how the equitable remedy of tolling, even if it is applicable in this instance, would operate.

a. The Discovery Rule

[2] [3] [4] The essence of Campau's argument is that he did not "discover," until the depositions of Drs. Patel and Pitts, that he had been discriminately discharged and therefore *511 the 300 day filing deadline should be tolled up to that time. To the extent that Campau is making a "Discovery Rule" type argument, that argument must fail. The discovery rule "postpones the beginning of the limitations period from the date when the plaintiff is wronged to the date when he discovers he has been injured...." *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450 (7th Cir.1990) (Posner, J.), *cert. denied,* 501 U.S. 1261, 111 S.Ct. 2916, 115 L.Ed.2d 1079 (1991). "It is not the date on which the wrong that injures the plaintiff occurs, but the date-often the same, but sometimes later-on which the plaintiff discovers that he has been injured." *Id.* For instance, where an employer decides to terminate an employee for an allegedly discriminatory reason but does not convey to the employee the decision to terminate him until a later date, the limitations period would begin to run on the date that the employee is notified of his termination and not on the date that the decision to terminate was made. Furthermore, it is the plaintiff's awareness of *actual* injury, as opposed to *legal* injury, that suffices to trigger the running of the statutory period. *See Oshiver v. Levin, Fishbein, Sedran & Berman,* 38 F.3d 1380, 1386 (3rd Cir.1994) (citing *Cada,* 920 F.2d at 450).

[5] The discovery rule is not applicable in this instance. The discovery rule is only concerned with the date of actual injury since the purpose of the rule is to determine the accrual date of the claim for purposes of when the statute of limitations begins to run. *See Merrill v. Southern Methodist University,* 806 F.2d 600, 604-05 (5th Cir.1986). Simply put, the accrual date in the instant case is the date of firing, April 4, 1995, since it was on that date that Campau became aware (1) that he had *actually* been injured, i.e., discharged, and (2) that this injury had been caused by another party's conduct. *Oshiver,* 38 F.3d at 1391. The accrual date is not the date that the termination took effect, i.e. August 4, 1996, and it most certainly is not the date Campau claims he became aware of an alleged legal wrong against him, i.e. either November 14, 1995 or February 2, 1996. As such, Campau's discovery rule argument must fail.

b. Equitable tolling

[6] [7] Equitable tolling "permits a plaintiff to avoid the bar of the statute of limitation if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim." *Cada,* 920 F.2d at 451. Equitable tolling is inappropriate where a plaintiff has either actual or constructive notice of his rights. *Jackson v. Richards Medical Co.*, 961 F.2d 575 (6th Cir.1992).

[8] Campau's equitable tolling argument is that he was unable to ascertain the facts necessary to file an EEOC complaint until February 2, 1996 when he "confirmed" that he was allegedly discharged due to a perceived handicap of alcoholism. Campau contends that while he learned, on November 14, 1995, that " *a* " reason for his termination was the defendants' alleged perception of his alcoholism, he was not able to "confirm" that fact until the February 2, 1996 deposition of Dr. Pitts.

Assuming, *arguendo,* that Campau exercised reasonable diligence, an assumption that is, nonetheless, unsupported by the submissions to this court,[FN7] his argument that he was not able to "confirm" the alleged discriminatory reason for discharge is, nevertheless, unavailing. As Judge Posner

stated in *Cada:* "If a plaintiff were entitled to have all the time he needed to be *certain* his rights had been violated, the statute of limitations would never run-for even after judgment, there is no certainty." Cada, 920 F.2d at 451 (emphasis in the original). Judge Posner continued: "And remember that we are speaking not of a judicial complaint, but of an administrative complaint. There is no duty of precomplaint inquiry in EEOC proceedings as distinct from federal court actions (Fed.R.Civ.P. 11)." *Id.* at 452. Here, *512 there is no reason why Campau could not have prepared an adequate administrative complaint within days of the November 14, 1995 deposition once he learned that " *a* " reason for the defendants decision to terminate him was, allegedly, their perception that Campau was an alcoholic.

FN7. Campau does not suggest, either in his complaint or in the instant pleadings, that he even inquired as to the reason for his termination. However, at oral argument, Campau's counsel represented to the court that Campau had inquired as to the reason for his termination and was told that it was due to the fact that OHPC could not obtain liability insurance as long as Campau was in their employ.

[9] As such, even if this court assumes that equitable tolling is warranted until the November 14, 1995 deposition, Campau, nevertheless, misstates his rights under that doctrine. Unlike the situation of equitable estoppel,[FN8] where a fraudulent concealment by the employer is shown, thereby entitling the court to subtract from the period of limitation the entire period in which the tolling condition is in effect, it is not at all clear that equitable tolling-a doctrine that adjusts the rights of two innocent parties-is as generous. Cada, 920 F.2d at 452. In such circumstances, the negligence of the party invoking the doctrine of equitable tolling, i.e. Campau's neglect in failing to file within a reasonable time after learning of the allegedly discriminatory reason for discharge, can tip the balance against the application of the doctrine. *Id.* at 453. As Judge Posner stated:

FN8. Equitable estoppel, also known as fraudulent concealment, is not limited to the limitations context and is frequently mislabelled "equitable tolling." *Allen v. Diebold, Inc.*, 807 F.Supp. 1308, 1314 (N.D.Ohio 1992) *aff'd* 33 F.3d 674 (6th Cir.1994). Equitable estoppel arises when "the defendant takes active steps ... above and beyond the wrongdoing upon which plaintiff's claim is founded to prevent the plaintiff from suing in time." Cada, 920 F.2d at 451. *See also Pinney Dock and Transport Co. v. Penn Central Corp.*, 838 F.2d 1445, 1471-72 (6th Cir.1988). Equitable estoppel presupposes that the plaintiff has discovered or should have discovered that the defendant has injured him, and focusses on the efforts-beyond the wrongdoing which plaintiff's claim is founded on-to prevent the plaintiff from suing in time. *See* Cada, 920 F.2d at 450-51. For example, the accrual of Campau's cause of action would be postponed if his employers had told him that they would not plead a limitations defense or provided Campau with forged documents which negated any basis for supposing that Campau's termination was related to his perceived alcoholism. *See id.* These efforts by the defendants must be viewed separately from the decision to terminate a plaintiff, even if the termination is a pretext for discrimination. *Id.* As such, any attempt by Campau to bring himself within the equitable estoppel doctrine by contending that the circumstances of his termination was a ruse to conceal the intent to fire him because of his perceived alcoholism improperly merges the substantive wrong with the tolling doctrine and must, accordingly, fail. *See id.* at 451. As Judge Posner stated: "It implies that a defendant is guilty of fraudulent concealment unless it tells the plaintiff, 'We're firing you because of your age.' It would eliminate the statute of limitation in age discrimination cases." *Id.* Clearly, Campau cannot advance an equitable estoppel argument on the instant facts. Instead, Campau's contentions are more properly put forth under the doctrine of equitable tolling where there is no allegation of impropriety on the defendant's part. *Hill v. U.S. Dept. of Labor*, 65 F.3d 1331, 1335 n. 2 (6th Cir.1995) (citing Cada, 920 F.2d at 451).

We do not think equitable tolling should bring about an automatic extension of the statute of limitations by the length of the tolling period or any other definite term. (citation omitted). It is, after all, an equitable doctrine. It gives the plaintiff extra time if he needs it. If he doesn't need it there is no basis for depriving the defendant of the protection of the statute of limitations. Statutes of limitations are not arbitrary

obstacles to the vindication of just claims, and therefore they should not be given a grudging application. They protect important social interests in certainty, accuracy, and repose. The statute of limitations is short in [handicapper] discrimination cases as in most employment cases because delay in the bringing of suit runs up the employer's potential liability; every day is one more day of backpay entitlements. We should not trivialize the statute of limitations by promiscuous application of tolling doctrines.

* * * * * *

Since it is rare that by the end of the day of the adverse action the plaintiff will have all the requisite information, the automatic-extension rule would extend the statute of limitations in virtually all cases, making the ostensibly fixed deadline illusory.

* * * * * *

When as here the necessary information is gathered after the claim arose but before the statute of limitations has run, the presumption should be that the plaintiff could bring suit within the statutory period and should have done so.

Cada, 920 F.2d at 452-53.

Judge Posner concluded, and at least one district court in the Eastern District of Michigan*513 has agreed, that "a plaintiff who invokes equitable tolling to suspend the statute of limitation must bring suit within a reasonable time after he has obtained ... the necessary information." *Cada*, 920 F.2d at 453. *See also Sherman v. Optical Imaging Systems, Inc.*, 843 F.Supp. 1168, 1180 (E.D.Mich.1994) (agreeing with Judge Posner's analysis).

In this case the time between Campau's obtaining the "necessary information," i.e. November 14, 1995 (more than two months before the statutory period which ran on January 29, 1996) and the time he filed his EEOC complaint, June 11, 1996, was almost seven months. Such delay evidences "a remarkable degree of lethargy in pursuing claims which should, by the righteous indignation such claims oft-times evoke, cry out for immediate protest." *Allen*, 807 F.Supp. at 1319. As such, this court finds that even if Campau was unable, despite all due diligence, to obtain vital information on the existence of his claim until November 15, 1995, his seven-month delay thereafter in filing charges with the EEOC is not, under any set of facts, reasonable and therefore a dismissal with prejudice is mandated.[FN9] *See Id. See also Sherman*, 843 F.Supp. at 1180.

FN9. Even if this court were to assume that Campau did not obtain the necessary information to file an EEOC charge until after the February 2, 1996 deposition, a finding that this court is not prepared to make, this court would still conclude that dismissal is warranted. In that case plaintiff's delay in filing an EEOC charge would have been more than four months, a delay which this court would still find to be unreasonable.

Moreover, any argument by Campau that he was not "sitting on his hands" during this seven month period, as evidenced by his pursuit of the state court action, is unavailing. Even if this court assumed that Campau sufficiently preserved his right to equitable tolling while he pursued his state court action, a finding that this court is not inclined to make in light of the dearth of caselaw supporting that argument,[FN10] Campau, nevertheless, cannot satisfactorily explain why he waited for another *one and half* months after

the entire state action was dismissed, on April 29, 1996, to file his complaint with the EEOC on June 11, 1996. Such a delay is likewise unreasonable under the circumstances of this case and therefore dismissal is appropriate.

FN10. Plaintiff directs this court to *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990). However, the Court in *Irwin* actually held that: "We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights." *Id.* at 96, 111 S.Ct. at 458. Clearly, plaintiff, in order to preserve his legal rights under the ADA, was required to file an EEOC complaint within a reasonable time after obtaining the necessary information which would bear on an ADA claim. Maintaining a state court action is not a sufficient exercise of due diligence to preserve Campau's legal rights under an ADA claim.

2. Res Judicata and Collateral Estoppel

Because this court finds that plaintiff has failed to exhaust his administrative remedies, it need not address the defendants' res judicata and collateral estoppel arguments.

Conclusion

In sum, because plaintiff failed to timely file charges of discrimination with the EEOC and because he is not entitled to the application of any equitable principles which would excuse his tardiness, the defendants' motion to dismiss will be granted pursuant to FRCP 12(b)(6) for plaintiff's failure to exhaust administrative remedies.

ORDER

IT IS HEREBY ORDERED that the defendants', ORCHARD HILLS PSYCHIATRIC CENTER, KENNETH E. PITTS and HITEN C. PATEL, motion to dismiss is **GRANTED** and plaintiff, THOMAS A. CAMPAU's claims remaining before this court are **DISMISSED.**

SO ORDERED.

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