GENERAL MOTORS CORP. v. PARAMOUNT METAL PRODUCTS CO:¹ THE ECONOMIC DURESS DOCTRINE AS CLAIMED BY A BIG THREE AUTO MANUFACTURER

Richard W. Warren

INTRODUCTION

As an extern for the United States District Court for the Eastern District of Michigan this past summer, I had the opportunity to witness the resolution of many cases that had and continue to have a great deal of influence upon the business climate in Michigan. The foremost of these decisions was General Motors Corp. v. Paramount Metal Products Co.² While working for The Honorable George C. Steeh, I was able to observe almost every aspect of negotiation and discussion that led to a resolution of General Motors Corp. v. Paramount Metal Products Co.³ The case held so much fascination for me because it was the first time the modern economic

2 *Note: Although the author remains critical of the decision in this case, the author possesses a high degree of respect and admiration for the judge who decided it: The Honorable George C. Steeh. His dedication to fairness and to the law marks him as an outstanding person and judge.
4 General Motors, 90 F. Supp. 2d at 861.
duress doctrine had been claimed by a Big Three Auto Manufacturer against one of its suppliers. The irony of one of the largest employers in the world claiming that its hand had been forced by a Tier-II supplier was clear. In comparison with other states, Michigan was comparatively late in adopting the modern economic duress doctrine, which had no requirement that the complained-of act must have been illegal. Thus, it was surprising that a Michigan court would accept the application of the modern economic duress doctrine in favor of a plaintiff that obviously held much more power than the defendant being sued.

To reinforce the irony of the decision, it may be useful to briefly examine a profile of General Motors. Since its founding in 1908, “General Motors has grown into the world’s largest automotive corporation and full-line vehicle manufacturer. The company employs more than 388,000 people and partners with over 30,000 supplier companies worldwide.”

\[4 \] See id. Prior to General Motors, the modern economic duress doctrine had been claimed and applied against creditors in a bankruptcy setting, automotive suppliers by other automotive suppliers, and by terminated employees against their employers. See In Re Rochkind, 128 B.R. 520 (Bkrtcy. E.D. Mich. 1991); Kelsey-Hayes Co. v. Galtaco Redlaw Castings Corp., 749 F. Supp. 794 (E.D. Mich. 1990); Hungenman v. McCord Gasket Corp., 189 Mich. App. 675 (1991). General Motors, however, represents the first time the modern economic duress doctrine was claimed by such a powerful and unlikely plaintiff, a major auto maker.

The term “economic duress doctrine” refers to the concept that a party can be excused from performance under a contract when that party demonstrates that it was induced to make the contract under circumstances that deprived it of the exercise of free will. See infra note 136.


is the largest U.S. exporter of vehicles, with manufacturing facilities in 50 countries.\footnote{See id.} Also, General Motors has a business presence in over 200 countries.\footnote{See id.} According to General Motor's third quarter financial report, net income totaled $829 million with GM North American income figures up 8.5 percent.\footnote{See General Motors Third Quarter 2000 Narrative, available at http://gm.com/company/investor_information/gm_financials/q32000/index.html.} Although Paramount Metal Products Corporation is not publicly traded and thus its financial information is not readily available, it is possible to conclude that Paramount most likely employs less than a tenth of the amount of employees GM has on its payroll and has revenues of less than a tenth of General Motor's. Why then would a federal court allow GM to use the modern economic duress doctrine to excuse its performance under a contract with Paramount?

This note examines the \textit{General Motors Corp. v. Paramount Metal Products Co.}\footnote{\textit{General Motors Corp.}, 90 F. Supp. 2d 861 (E.D. Mich. 2000).} decision and attempts to explain why a United States District Court allowed one of the largest employers in the world to successfully claim that a comparative minnow corporation placed it under duress. Part I presents the facts of the case and discusses the United States District Court's opinion. Part II discusses the general history of the economic duress doctrine and modern economic duress doctrine. Part II then examines the classic definition of duress, the recognition and utilization of duress in economic circumstances, and the dropping of the requirement that economic duress requires proof of an illegal act. Part III presents and analyzes the opinion and
attempts to explain how the court reached its conclusions. Part IV considers the impact that the decision will have in the future on relations between auto makers and suppliers. Finally, the note’s conclusion expresses the author’s concern that federal courts may be influenced too much by economic considerations, resulting in decisions that merely serve to accommodate those individuals and corporations least in need of assistance at the expense of those that do need accommodation. More specifically, the author fears that the General Motors decision has expanded the modern economic duress doctrine beyond the scope of its meaning.

Factual Background

Plaintiff General Motors Corporation (General Motors) and Woodbridge (GM’s assembly plant that was supplied with parts from Paramount) contracted with Paramount for the manufacture of automobile seat frames that would be installed onto General Motor’s vehicles.\textsuperscript{11} As General Motor’s selected supplier for the seat frames, General Motors had contracted with no other company for the manufacture of that product.\textsuperscript{12} The contract in question (for the supply of automobile seat frames) between General Motors and Paramount lasted from 1997 until the year 2000.\textsuperscript{11} Since modern business philosophy cautions against the amassing of massive quantities of inventory in one location, General Motors operated on a “just-in-time” (JIT) philosophy. JIT required that shipments of parts and supplies would be continuously delivered from the supplier.


\textsuperscript{12} See General Motors Corp., 90 F. Supp. 2d 861, 864.

\textsuperscript{13} See id.
to the manufacturer, in order to ensure that inventory was present when needed.\textsuperscript{14} Paramount delivered its seat frames to General Motors in such a fashion.\textsuperscript{15} In late 1997, Paramount began to experience financial difficulties as the result of its operation of the automotive seat frame business.\textsuperscript{16}

The owner of Paramount had at one time been a General Motor's employee (before owning Paramount). Nearing the end of his career with General Motors, employees of General Motors asked him to consider assuming the ownership and operation of an automobile seat frame business. The owner dissented, claiming that he had neither the capital nor the experience to begin the operation of such a business. Since General Motors wanted to shift manufacture of components away from its central locations, GM offered to train the owner of Paramount and his employees in the operation of the business. Thus, the creation of Paramount Metal Products Co. was really the result of a synergy between GM and Paramount's owner, a former GM employee. As Paramount grew and developed, it sought particular concessions from GM in order to make its transition from new company to established supplier smoother. GM had agreed to these concessions since it had prompted the creation of Paramount.

Then, in 1997, Paramount once again asked GM to make some concessions in order to ease Paramount's financial burden of meeting GM's production needs.\textsuperscript{17} Specifically, Paramount asked GM to either grant it retroactive price increases amounting to over $9 million or buy

\footnotetext{14}{See id.}

\footnotetext{15}{See id.}

\footnotetext{16}{See id.}

\footnotetext{17}{See General Motors Corp., 90 F. Supp. 2d 861, 864.}
Paramount for $18 million. Further, Paramount claimed that without GM's acquiescing to either alternative, Paramount would be forced to cease operations. General Motors claimed that without production and delivery of automobile seat frames by Paramount, GM would be forced to shut down its assembly plants, causing GM to sustain very substantial daily losses until production was resumed. When all factors of the dilemma were taken into consideration, GM decided to grant the retroactive price increases to Paramount so the GM assembly plants could remain open, thus averting high financial losses.

After weeks of negotiations, General Motors and Paramount signed an accommodation agreement providing "$488,935.00 would be released to Paramount from escrow as a reversal of certain improper debits... and Paramount would be paid a $2.13 prospective price increase on

---

18 See id. The increases that Paramount asked for related to the price per unit which General Motors paid Paramount for each seat frame. Although General Motors utilizes the services of many suppliers, there are many more companies who consistently vie to replace current suppliers to General Motors. Such intense competition for GM dollars results in low prices for the parts that GM purchases. In order to receive business from GM, a supplier must charge the lowest price possible while maintaining certain quality standards (for each unit sold) that GM sets. This balancing act is at the best of times difficult, making a demand for price increases seem somewhat reasonable.

19 See id. While attending settlement negotiations between GM and Paramount, I was able to listen to both parties' justifications for their actions. Paramount's owner felt betrayed by GM's actions, since it was GM who had influenced him to form and operate Paramount from the beginning. Paramount's owner raised plausible concerns that without such a price adjustment or buyout, Paramount would operate with a significant loss, making it untenable for it to operate at all. It did not appear to the author that Paramount was demanding concessions that would allow it to generate significant profit.

20 See id. During the negotiations, GM claimed that it would take up to three weeks to find and obtain production from another automobile seat frame manufacturer. Although this time period may seem short, the closing down of GM's assembly lines would cause very high daily losses until replacement parts were found.

21 See id.
certain parts effective January 1, 1998. On June 22, 1998, General Motors contracted with an alternate supplier for the production of automobile seat frames. General Motors then filed suit to invalidate the accommodation agreement of December 11, 1998 on the basis of economic duress and for the specific performance of prior contracts between General Motors and Paramount. Paramount then filed a counter-claim, alleging that GM must perform the Accommodation Agreement and that GM is liable in fraud for signing an agreement with the intent of dishonoring it once they found a new supplier of automobile seat frames. Paramount also alleged that General Motors “failed to pay $500,000 of the $4.4 million price increase promised under the Accommodation Agreement for parts and tools.” Paramount also alleged that it suffered the loss of $13.5 million in unliquidated damages.

Plaintiffs General Motors and Woodbridge then moved “for summary judgment of Paramount’s counterclaims of fraud, breach of a duty of good faith and fair dealing, and punitive

22 General Motors Corp., 90 F. Supp. 2d at 864. This accommodation agreement was executed on December 11, 1997.

23 See id.

24 See id. General Motors and Woodbridge alleged eight counts: 1) breach of Woodbridge purchase orders, 2) breach of GM tooling purchase orders, 3) conversion of GM tooling, 4) economic duress in executing the Accommodation Agreement, 5) constructive trust, 6) unjust enrichment, 7) breach of GM purchase orders, and 8) recission of the Accommodation Agreement.

25 See id. Specifically, Paramount alleged five counter-claims: 1) fraud, 2) breach of contract, 3) breach of the duty of good faith and fair dealing, 4) defamation, and 5) punitive damages.

26 Id. at 865.

27 See General Motors Corp., 90 F. Supp. 2d at 865.
damages, and Paramount's claim for unliquidated damages." General Motors and Woodbridge further moved "for summary judgment of Paramount's affirmative defenses of accommodation, accord and satisfaction, settlement, adhesion contract, and economic impossibility of performance." The resulting law suit dealt with these claims and the demand for summary judgment by General Motors and Woodbridge.

BACKGROUND OF THE MODERN ECONOMIC DURESS DOCTRINE

A. General Economic Duress Doctrine

The Public Contract Law Journal explains "the law of contracts is founded upon the concept of consent . . . that is, contracts are agreements, voluntarily entered into by competent parties." The Journal goes on to mention that courts are loath to allow parties to deny responsibilities which they have voluntarily assumed under a contract. Courts began to recognize, however, that contracts could be disavowed if they had been agreed to under economic duress. At common law, however, courts only recognized four types of acceptable duress: 1) fear of loss of life, 2) fear of loss of limb, 3) fear of mayhem, and 4) fear of imprisonment." In 1871, the Supreme Court noticed a need for the extension of the duress

---

28 Id. at 866.
29 Id.
31 See id.
32 See id.
33 See id.
doctrine to the realm of contracts. The vehicle for this change was *French v. Shoemaker.* In the case, the Court stated "the modern decisions in this country adopt a more liberal rule, and hold that contracts procured by threats of battery to the person or of destruction of property may be avoided on the ground of duress." This single decision created the use of duress in an economic context and paved the way for the modern definition of economic duress.

A later decision, *Robertson v. Frank Brothers Co.*, further clarified the new application of duress to avoid performance under contracts. In that case, importers of bananas were forced by customs agents to pay 50 per cent of the value of their shipment to customs as a transportation expense. Importers who failed to do this were charged the 50 per cent and an additional 20 per cent by the customs agent as a penalty. The 50 per cent payment was not required by law. Although the plaintiffs protested against the payment of the 50 per cent, they did pay the fee and later brought suit. The customs agents defended by insisting that no suit could be brought because the plaintiffs had voluntarily paid the fee. The Court refused to accept this argument,

---

34 See id. at 81.
35 81 U.S. 314, ___ (1871), cited in ___.
36 *French,* 81 U.S. at ___.
37 132 U.S. 17 (1889).
38 See *Robertson,* 132 U.S. at 18.
39 See id.
40 See id. at 19.
41 See id. at 19.
42 See id. at 20.
stating "the money was obtained by a moral duress not justified by law." \(^{43}\)

The Public Contract Law Journal concludes its examination of the law of economic
duress by stating:

the rule as to duress, indicated by the trend of authorities, has receded from its
ancient strictness and has been accepted in numerous instances wherein it
appeared that the parties were not on equal terms and no alternative existed except
to submit to an illegal exaction or suffer irreparable injury to business. \(^{44}\)

Professor Williston also subscribed to the theory of economic duress. \(^{45}\) In his treatise on
Contracts, Williston argues that "[a] threatened injury . . . to means of earning a livelihood which
goes beyond the means legally allowed for the enforcement of a party's claim may constitute . . .
duress." \(^{46}\) The Restatement (Second) of Contracts also recognized the need for acceptance of the
economic duress doctrine. \(^{47}\) It defined economic duress as a threat which produces economic
pressure to sign a contract if the threat is improper and leaves the other party with no reasonable

\(^{43}\) Robertson, 132 U.S. at 25.

\(^{44}\) Economic Duress and Unconscionability: How Fair Must the Government Be?,

1970).

\(^{46}\) A Treatise on the Law of Contracts at 648-649. Note that Williston did not accept
the modern economic duress doctrine, but instead required that the threatened act be illegal and
not merely improper.

\(^{47}\) See RESTATEMENT (SECOND) OF CONTRACTS § 175(1) (1979).
solution besides the signing of the contract. By the late 1970's, then, the doctrine of economic duress had been enshrined in the most popular legal texts, although its requirements have not been the same in all places.

The development of the doctrine of economic duress, then, followed a three-step evolution. In the first step, the transition was made from mere acceptance of duress when physical harm is threatened to acceptance of duress when harm to property was threatened. The second step involved the acceptance of a duress argument in a contract setting when an illegal act is threatened or carried out. The final step was the modern economic doctrine: that duress was an acceptable defense to the formation of a contract when irreparable injury to business was threatened. This gradual broadening of the economic duress doctrine was mirrored (although later in time) by Michigan Law.

B. Non-Michigan Case Law

1. An Example of Early Application of the Doctrine of Duress

In order to fully understand Michigan’s case law regarding economic duress, it is useful to compare the evolution of the law of economic duress outside of Michigan; The United States District Court that decided General Motors Corp. v. Paramount Metal Products Co. itself looked at Ohio law in determining how it would apply the economic duress doctrine.49

The classic brand of duress was dealt with in an early Massachusetts case, Silsbee v.

---

48 See RESTATEMENT (SECOND) OF CONTRACTS § 175(1) (1979). In comparison with Williston’s theory, note that the Restatement does not require the presence of an illegal threat—it merely requires that the threat be improper.

49 90 F. Supp. 2d 861, 876-877 (E.D. Mich. 2000). The cases Judge Steeh utilized in formulating his decision will be examined in a later section of this note.
Webber. In Silsbee, the plaintiff sued to recover money that she alleged was taken from her under duress by the defendant. Specifically, the plaintiff's son was accused of stealing by the defendant. The defendant threatened (to the plaintiff) that he would tell the plaintiff's husband about the theft if the plaintiff did not assign a share in her father's estate to the defendant. Under protest of both the plaintiff and her son, the plaintiff did as the defendant requested. The court decided to excuse the plaintiff from performance under the contract because: 1) fear was instilled in her by the defendant, 2) the grounds for her fears were reasonable, 3) that the fear was a powerful enough motive to triumph over the plaintiff's self-interest, and 4) that the defendant knew he obtained the promise from defendant based upon the fear he instilled in her.

When compared with the material above, it is interesting to note the absence of a patently illegal act by the defendant (notwithstanding the court's acceptance of the plaintiff's duress defense), although the threat to the plaintiff was certainly improper. The court, as early as 1889, accepted the notion that duress could be claimed without the presence of an illegal threat by the defendant. As explained above, this concept would eventually become a cornerstone of the modern economic duress doctrine in many jurisdictions and would be a key facet of the General Motors Corp. v. Paramount Metal Products Co. decision.

50 50 N.E. 555 (1898).
51 Silsbee, 50 N.E. at 556.
52 See id. Apparently, the plaintiff's husband was very ill and would (the plaintiff thought) have gone insane had he been told about his son's act of theft.
53 See id.
54 See id.
2. Recent Applications of the Economic Duress Doctrine

a. Mancino v. Friedman

In its opinion, the General Motors Court cites to Mancino v. Friedman during its discussion of General Motor's claim of economic duress. In Mancino, the appellee alleged that the appellant owed him $350 plus interest of eight per cent per annum on a promissory note dated July 15, 1977. The appellee (Friedman) further stated that as a condition of the promissory note, the appellant (Mancino) had consented to waiver of service and process and a consent judgment in favor of the appellant if the appellee did not perform his duties according to the note. The court below had examined the pleadings (which contained the note and agreement for a consent judgment) and had granted summary judgment in favor of Friedman. Mancino then filed a motion to stay proceedings and vacate the judgment against him. In support of this motion, Mancino alleged that the promissory note lacked consideration and had been agreed to

55 429 N.E.2d 1181
56 429 N.E.2d 1181 (Ohio App. 1980).
58 See Mancino, 429 N.E.2d at 1183. The record is devoid as to any mention of whether Mancino actually paid the three painters for their work. It appears, however, that Mancino paid the general contractor, Dell Painting and Decorating Company, but the general contractor failed to pay the subcontractor.
59 See id.
60 See id.
61 See id.
under duress.\textsuperscript{62}

Specifically, Friedman, an attorney, had represented three clients in an action against Mancino.\textsuperscript{63} As a result of the dispute, the clients claimed a mechanic's lien against Mancino's property. Soon after, a settlement agreement was reached between Mancino and the three painters. Friedman's clients, however, refused to pay his legal fees, so Friedman threatened his refusal to drop the suit against Mancino unless Mancino agreed to pay the legal fees that Friedman's clients still owed.\textsuperscript{64} For the purpose of having the lien against his property abandoned, Mancino signed the promissory note.\textsuperscript{65}

In examining the record of the trial court and all the briefs in support of motions, the court stated "appellant's promise to appellee to file these releases was not valuable consideration for appellee's return promise to pay the legal fees..." since Friedman was already under an obligation to file these releases (as a result of the settlement reached).\textsuperscript{66} Further, the court explained that Mancino's pleadings contained enough evidence to warrant a claim of economic

\textsuperscript{62} See id.

\textsuperscript{63} See Mancino, 429 N.E.2d at 1183. Appellant's clients were three painters who had painted appellee's rental property. The painters claimed that they had never been paid and, as a result, placed a mechanic's lien upon the rental property.

\textsuperscript{64} See id.

\textsuperscript{65} See id. at 1184. Concurrent with the signing of the promissory note, Friedman was able to get the three painters to agree to a release of their claims against Mancino in consideration for the paying of their legal fees.

\textsuperscript{66} See id. at 1185.
duress.\textsuperscript{67} In stark contrast to the decision of the court that relied on this case, the \textit{Mancino} Court defined economic duress as a defense that "arises when one individual, acting upon another's fear of impending financial injury, unlawfully coerces the latter to perform an act under circumstances which prevent his exercise of free will."\textsuperscript{68} In concluding that Mancino could avoid the contract based upon economic duress, the court stated "[w]e . . . observe that appellee's affidavit contained credible evidence that he indeed executed the note to appellant solely out of fear of impending financial injury."\textsuperscript{69} More specifically, the court seemed to place great importance on the fact that the appellee was not allowed to exercise his free will in the transaction.\textsuperscript{70}

The main shortcoming in the \textit{Mancino} decision is that it does not draw a bright-line test to determine how much threatened financial injury is enough to constitute economic duress. The record does not indicate whether the presence of the mechanic's lien would have prevented Mancino from seizing some valuable opportunity, or whether the mere presence of the mechanic's lien was enough to constitute economic duress. The main point of explaining this case is that, unlike the \textit{General Motors} Court that relied on the \textit{Mancino} decision, the \textit{Mancino}

\textsuperscript{67} See id. The court noted that economic duress, or "business compulsion," was a species of duress mentioned in modern practice by a majority of American courts.

\textsuperscript{68} \textit{Mancino}, 429 N.E.2d at 1186. Note that this particular definition of economic duress uses the phrase "impending financial injury" which does not set a specific level of financial injury that one must show. For instance, a showing of financial injury (under the \textit{Mancino} definition) could presumably be met with a minimal level of financial loss. Later cases would placed a higher requirement of loss to be shown in order to claim economic duress.

\textsuperscript{69} Id.

\textsuperscript{70} See id.
court required a party claiming economic duress to show that the threat by the offending party was illegal in nature (and not merely improper).

b. *Blodgett v. Blodgett*\(^{71}\)

Also used in the formulation of the General Motors decision\(^{72}\) was *Blodgett v. Blodgett*.\(^ {73}\)

In *Blodgett*, Nancy and William Blodgett married in 1975 in Connecticut.\(^ {74}\) Both Nancy and William signed an antenuptial agreement in 1975.\(^ {75}\) Just days before their marriage, William agreed to purchase the assets of Roberts Express, a shipping company.\(^ {76}\) William then ran the company while Nancy assisted him in its day-to-day operations.\(^ {77}\) The company was later sold to Roadway Services for $6 million in cash, $3 million in incentives if certain goals were met, and $3 million for a non-compete agreement between Roadway and William Blodgett.\(^ {78}\)

Nine years later, Nancy and William separated and Nancy filed for a divorce.\(^ {79}\) The trial court decided that the $6 million in proceeds from the sale of Roberts Express was a marital

\(^{71}\) 551 N.E.2d 1249 (Ohio 1990).


\(^{74}\) *Blodgett*, 551 N.E.2d at 1249.

\(^{75}\) *See id.* Curiously, the court did not explain what the antenuptial agreement stated.

\(^{76}\) *See id.*

\(^{77}\) *See id.*

\(^{78}\) *See id.*

\(^{79}\) *See Blodgett*, 551 N.E.2d at 1249.
asset. The trial court awarded Nancy $3.1 million (this award included half of the proceeds from the sale of Roberts Express). In doing so, the court refused to honor the antenuptial agreement signed by Nancy and William. William appealed the decision of the trial court to disregard the antenuptial agreement. Nancy also appealed, claiming that the court erred in its distribution of the assets. Because of the nature of the award, Nancy could not receive it until the determination was final. With this in mind, Nancy agreed to sign a satisfaction of judgment in return for the payment of $2.5 million to her by William.

At the appellate level, the trial court's decision was upheld, based upon the trial court's finding that Nancy signed the antenuptial agreement under coercion. William Blodgett then appealed to the Supreme Court of Ohio. Nancy cross-appealed, claiming that she was forced to sign the satisfaction of judgment under economic duress and that the agreement should be

---

80 See id. The other $6 million was found to be the sole property of William Blodgett.
81 See id.
82 See id. at 1250.
83 See id.
84 See Blodgett, 551 N.E.2d at 1250.
85 See id.
86 See id.
87 See id. The court found that Nancy signed the antenuptial agreement under "economic duress" but did not offer a rationale for its decision.
88 See id.
abandoned. Specifically, she stated that she felt compelled to sign the satisfaction of judgment (to receive the award) because the alternative would have left her with inadequate funds to provide for her own meals and shelter until all appeals were exhausted.

In finding for William, the Supreme Court reasoned that in order to claim economic duress, a person must "show that he or she was subjected to a wrongful or unlawful act or threat. . . and that it . . . deprive[d] the victim of his unfettered will." The court felt that the record was completely devoid of any evidence that William placed Nancy under duress when asking her to sign the satisfaction of judgment agreement. Furthermore, the court stated that "merely taking advantage of another's financial difficulty is not duress (emphasis added)." In other words, the court seemed to indicate that unless the offending party's conduct was the cause of the financial distress of the claimant, the claimant could not successfully argue economic duress.

The purpose of examining the Blodgett case in-depth is to show the inconsistency between the Blodgett Court's rationale for finding (or not finding) for a claimant of economic duress and the General Motors Court's finding of economic duress. Based on the court's definition of economic duress and its subsequent decision, one can infer that the court did not believe that William's conduct in any way caused Nancy's financial distress. Also, reference to

---

89 See Blodgett, 551 N.E.2d at 1250.
90 See id.
91 See id. at 1251.
92 See id.
93 See id.
94 See Blodgett, 551 N.E.2d at 1249.
this case is useful because it is a fairly modern decision, yet the court still defined economic duress as requiring an unlawful act and not merely an improper one.\textsuperscript{95}

Although the Blodgett decision involved a markedly different fact pattern than General Motors, the Blodgett Court correctly interpreted the doctrine of economic duress while the General Motor's Court did not. This is surprising in light of the fact that Blodgett was cited and relied upon by the General Motors Court in finding that grounds for economic duress existed. This view will be fully fleshed out when discussed as part of the General Motors decision.\textsuperscript{96}

c. \textit{Carroll v. Delspina}\textsuperscript{97}

While not cited in the General Motors decision, examination of the Carroll case is helpful for two reasons: 1) the court defines economic duress as requiring the commission of an unlawful act by the offending party before the claimant can assert economic duress\textsuperscript{98} and 2) the case is very recent (1997) and is from the same court as the cases relied upon by General Motors.

In the case, Nora Carroll appealed from a judgment of the trial court in favor of Anthony Delspina in an action to quiet title to real estate.\textsuperscript{99} Carroll alleged that Delspina had obtained title to her property through coercion and duress, and asked for the court to set aside the

\textsuperscript{95} \textit{See id.}

\textsuperscript{96} \textit{See infra}, discussion of the decision at 33.

\textsuperscript{97} 1997 WL 152005 (Ohio App. 10 Dist., 1997).

\textsuperscript{98} \textit{See Carroll v. Delspina}, 1997 WL 152005 (Ohio App. 10 Dist., 1997). As stated above, the General Motors decision was unique in that it declared that economic duress did not require a showing of illegality, but merely impropriety.

\textsuperscript{99} \textit{See id.} at 1.
conveyance.\textsuperscript{100} Apparently, Carroll had owned her residence for 25 years (the parcel of land in question) and believed the value of the property was between $80,000 and $84,000.\textsuperscript{101} Carroll eventually lost her home through her association with one Barry Kessler.\textsuperscript{102} Carroll became romantically involved with Kessler. This led to Kessler proposing to Carroll an investment scheme where, by investing $55,000 in a software development project, Carroll could expect a return of $610,000.\textsuperscript{103} Carroll agreed.\textsuperscript{104} The gist of the ensuing transaction was that Carroll executed a warranty deed to her home in favor of Delspina, who gave Kessler the money needed to invest in his “software project.”\textsuperscript{105} The net result was Carroll’s loss of her home and the filing of a complaint against Delspina, alleging economic duress.\textsuperscript{106} After the trial court found for the defendant, Carroll appealed.\textsuperscript{107}

In accepting the reasoning of the trail court, the appellate court remarked that “appellant’s

\textsuperscript{100} See id.

\textsuperscript{101} See id.

\textsuperscript{102} See id. Kessler was described by the court as a person whose “various financial deeds and misdeeds are outside the scope of this matter.” The court itself describes the fact pattern as “bizarre, and undoubtably tragic from the point of view of the appellant.” Id.

\textsuperscript{103} See Carroll, 1997 WL 152005 at 1.

\textsuperscript{104} See id.

\textsuperscript{105} See id. at 3.

\textsuperscript{106} See id. At trial, Carroll mentioned that during the process of obtaining the loan, Kessler kept referring to the other parties involved as “the leg breakers” thus, in her mind, prompting fear of not going through with the agreed-to deal. See id.

\textsuperscript{107} See id.
difficulties were not the result of any coercive acts on the part of Delspina.”

Relying heavily upon the definition of economic duress used in Blodgett, the Carroll court stated that “[i]n order to establish economic duress, the victim must show that she was subjected to a wrongful or unlawful act or threat that deprived the victim of her unfettered will.” The court decided that the coercive pressure must come directly from the defendant for a claim of economic duress to be valid—it is not enough for that coercive pressure to come from something or someone else. It was not enough that Carroll was coerced by Kessler, because at that point, Kessler had become her agent. Therefore, Delspina could not have been liable on a charge of economic duress. This inference and its conclusion will be used in the analysis to criticize the decision of the General Motors Court. Before doing so, however, one must examine both the development of economic duress in Michigan and key cases that dealt with this doctrine.

C. The Development of Economic Duress in Michigan

1. In General

“While it is generally accepted that one form of duress arises when a party’s assent is induced by a threat, courts differ on the nature of the threat necessary.” The range of threat required varies from illegal to merely improper. The difference between each court’s

---

108 Carroll, 1997 WL 152005 at 1.
111 See id.
requirement is highlighted in cases where economic duress is claimed. Economic Duress has been defined as the "imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress or extreme necessities or weakness of another." Michigan state courts hold that, in order to void a contract based upon economic duress, the claimant must make some showing that the offending party's act was illegal. Michigan federal courts, however, have held that the threatened act need not be illegal, but must be improper. This lowered standard is a drastic departure from Michigan State court law and makes the burden of claiming economic duress much easier. Although the holdings of Michigan Federal Courts are more in line with the law in other districts, in the author's opinion the divergence allows powerful parties like General Motors to escape from poorly-planned business deals.

D. Michigan Case Law Leading Up To General Motors Corp. v. Paramount Metal Products Co.

As stated above, case law in Michigan and elsewhere dealing with economic duress is divided into two distinct classes: 1) cases where, in order for economic duress to be successfully claimed, the claimant must assert that the offending party's act was illegal and 2) cases wherein courts require that the offending party's act merely be improper. What follows is a brief examination of important Michigan cases according to the two different categories of economic

---

112 See id.
113 See id.
114 See id.
duress mentioned above.

1. *Michigan Cases Requiring Unlawful or Illegal Acts to Claim Economic Duress*

   a. *Hackley v. Headley* \(^{116}\)

   In 1881, the Michigan Supreme Court decided the keynote economic duress case. In *Hackley v. Headley*, \(^{117}\) the plaintiff sued the defendant to recover compensation for assisting the defendant in the cutting and transportation of logs intended to be transported on the Muskegon River. \(^{118}\) The labor was performed as agreed to, but the plaintiff argued over the terms contained within the contract for employment. \(^{119}\) As proof of his claim that the parties had settled, Hackley produced a receipt for the court–Headley, however, claimed that the receipt had been agreed to under duress. \(^{120}\) According to the contract, the logs cut by Headley were to be scaled (or measured) in accordance with Muskegon River customs. \(^{121}\) The problem arose because the customary method of scaling on the Muskegon River changed from one rule to another between the time the contract was signed and ultimately performed. \(^{122}\) If the contract price were paid under the first rule, Headley's payment would have been much higher than if the second rule was

---


\(^{117}\) 45 Mich. 569 (Mich. 1881).

\(^{118}\) *See Hackley*, 45 Mich. at 571.

\(^{119}\) *See id.*

\(^{120}\) *See id.*

\(^{121}\) *See id.* The scaling question was an important one because, under the contract, Headley was to be paid based upon the scaling of the logs he cut and transported.

\(^{122}\) *See id.*
Hackley, of course, had the logs scaled according to the second rule, resulting in less money being paid to Headley. Headley accepted the reduced payment because, as he stated, he "shall probably be ruined financially" if he did not accept it.

Examining Headley's claim of duress, the court stated that "[d]uress exists when one by the unlawful act of another is induced to make a contract or perform some act under the circumstances which deprive him of the exercise of free will." In holding for Hackley, the court placed great importance on the fact that Hackley had done nothing to place Headley in such a precarious financial position (other than his decision to pay Headley according to a different standard). The implication was that a claimant could not properly claim economic duress when he himself had been responsible for a situation wherein he had to accept the offending party's decision. When this statement is applied to the General Motors decision, the significance of it will become obvious.


In 1978, the Michigan Court of Appeals decided a case involving a shareholder derivative action seeking restoration of salaries paid to the defendants and an order to compel the

---

123 See Hackley, 45 Mich. at 572.
124 See id.
125 See id.
126 Id.
127 See id. at 576.
corporation to buy his shares.\textsuperscript{129} Barnett, Brode, and Greenspan were associated in both a corporation and a partnership.\textsuperscript{130} Barnett arranged for a mortgage to be given to the corporation.\textsuperscript{131} The money from the mortgage transaction was required to ensure the financial soundness of the corporation.\textsuperscript{122} While this was occurring, Barnett called a management meeting, in which he asked Brode and Greenspan to assume full-time, managerial responsibility for the corporation for a period of not less than four years.\textsuperscript{133} At the meeting, Barnett had raised the issue of personally guaranteeing the mortgage, which the other directors could not afford.\textsuperscript{134} Because none of the other directors could afford this, they felt that they were forced to agree to full-time management, with the alternative being (Brode and Greenspan felt) that Barnett would refuse to personally guarantee the note, thereby resulting in the failure of the corporation to receive the mortgage.\textsuperscript{135}

The main issue at trial was whether the management agreement was enforceable against Brode and Greenspan.\textsuperscript{136} The court defined economic duress using the definition provided by the

\begin{itemize}
\item \textsuperscript{129} See Barnett, 80 Mich. App. at 396.
\item \textsuperscript{130} See id.
\item \textsuperscript{131} See id.
\item \textsuperscript{132} See id.
\item \textsuperscript{133} See id.
\item \textsuperscript{134} See Barnett, 80 Mich. App. at 401.
\item \textsuperscript{135} See id. The agreement increased the salaries of both Brode and Greenspan to offset the burden of their increased duties.
\item \textsuperscript{136} See id.
\end{itemize}
Headley Court. Discussing the economic duress claim, the court remarked that “as a result of (claimed economic duress) . . . the party threatened must be compelled to make a disproportionate exchange of values or give up something for nothing. If the payment or exchange is made with the hope of obtaining a gain, there is not duress.” In finding that the agreement had been executed free of duress, the court implied that Brode and Greenspan did receive something of value for their agreement and thus could not effectively claim duress. Broken down, this formula simply means that a party who signs an agreement and receives something of objective and reasonable value for their consideration cannot then seek to avoid the agreement by claiming economic duress. The focus of the court’s statement of this principle seems to be upon the power relationship between the contracting parties. The court appeared to think that Brode and Greenspan’s claim of economic duress was less credible since the agreement, while it may have been coerced, placed them in a reasonable situation.


In this action, a payor of a note sued to obtain discharge from the note, arguing lack of capacity at the time of execution. As one of his defenses, the appellant claimed that he signed

---

137 See id. at 405. Which defined economic duress as “Duress exists when one by the unlawful act of another is induced to make a contract or perform some act under circumstances which deprive him of the exercise of free will.” Hackley v. Headley, 45 Mich. 569, 574 (1881).

138 See id. at 408.

139 See Barnett, 80 Mich. App. at 408.


the note under duress.\textsuperscript{142} Specifically, the appellant pointed to the payee’s threats to institute collection proceedings as constituting the economic duress that forced him to sign the promissory note.\textsuperscript{143} In holding against the appellant, the court stated that “[f]ear of financial ruin alone is insufficient to establish economic duress; it must also be established that the person applying the coercion acted unlawfully.”\textsuperscript{144}

The conclusions drawn by this court are directly relevant to the issue presented in General Motors. A component of General Motor’s argument was, in fact, that they were forced to agree to Paramount’s demand for price increases for fear that they would lose millions of dollars (i.e. be financially ruined) if they did not. Although this court rejected such an argument, we shall see what the General Motors Court thought of it.


Regarding the treatment of economic duress in Michigan, three cases typify the more modern approach: 1) \textit{Kelsey-Hayes Co. v. Galtaco Redlaw Castings Corp.},\textsuperscript{145} 2) \textit{In Re

\begin{footnotesize}
\begin{enumerate}
\item \textit{See Apfelblat}, 158 Mich. App. at 258.
\item \textit{See id.}
\item \textit{Id.}, citing Transcontinental Leasing v. Michigan National Bank of Detroit, 738 F.2d 163, 166 (CA 6, 1984).
\end{enumerate}
\end{footnotesize}
Rochkind,\textsuperscript{146} and 3) Hungeman \textit{v.} McCord Gasket.\textsuperscript{147} These cases are significant in that they discarded the older formulation of economic duress and instead opted for a definition that only requires a wrongful, rather than an illegal, threat. This formulation of economic duress is the one that the \textit{General Motors} Court relied upon when deciding to accept GM's claim of economic duress against Paramount Metal Products.

a. \textit{Kelsey-Hayes \textit{v.} Galtaco Redlaw Castings Corp.}\textsuperscript{148}

This decision marked the first time a Michigan federal court accepted the prevailing notion that economic duress did not require the offending party to commit an illegal act.\textsuperscript{146} In the case, Kelsey-Hayes, who made brake assemblies, sued Galtaco, who supplied parts for the brake assemblies to Kelsey-Hayes.\textsuperscript{150} The dispute arose over a three-year requirements contract that Kelsey-Hayes had signed with Galtaco.\textsuperscript{151} The contract provided that Kelsey-Hayes was to buy parts for its brake assemblies only from Galtaco.\textsuperscript{152} In return, Galtaco would charge fixed prices to Kelsey-Hayes for the first year of the contract, then would reduce its prices as the years

\begin{footnotes}
\footnotesize
\item[148] Supra note 144.
\item[150] \textit{See Kelsey-Hayes}, 749 F. Supp. at 794.
\item[151] \textit{See id.}
\item[152] \textit{See id.}
\end{footnotes}
proceeded. Soon, Galtaco began experiencing a downturn in its business.

As a result, Galtaco informed its customers of its losses and agreed to supply all of them (including Kelsey-Hayes) for another three months if the customers agreed to a price increase of 30%. The alternative, Galtaco argued, was the cessation of all its operations. Since Kelsey-Hayes estimated that it would take longer than 15 weeks to find another suitable supplier, it accepted Galtaco's offer subject to the 30% price increase. Under this agreement, Kelsey-Hayes accepted all of the shipments under the new contract, but failed to pay for the amount of deliveries that approximated the 30% price increase.

The dispute over the price increase eventually made its way to federal district court, where Kelsey-Hayes argued that the 30% price increase was agreed to under duress. The court remarked that Galtaco's argument against a finding of economic duress relied mostly on early cases that emphasized the necessity of an illegal act to precipitate a successful claim of economic duress. The court, however, weighed this argument against the more modern trend holding

---

153 See id.

154 See id. Kelsey-Hayes was aware of the problems that Galtaco was encountering. After two years, the amount of losses Galtaco sustained amounted to $2.4 million.

155 See Kelsey-Hayes, 749 F. Supp. at 796.

156 See id.

157 See id. at 796.

158 See id.

159 See id.

that, to constitute economic duress, a threat need not be illegal, but merely improper.\footnote{161} Applying
the law of Michigan, the court held that, “if the Michigan Supreme Court looked at the issue
today, it would rule that economic duress need not stem from an ‘illegal’ threat.”\footnote{162} Specifically,
the court found reasonable Kelsey-Hayes’ claim that it could not find another supplier (other than
Galtaco) within the time it needed to complete its production and ship to its customers.\footnote{163} This,
the court found, made it impossible for Kelsey-Hayes to exercise its free will in agreeing to the
30% price increase as a condition of continued delivery.\footnote{164}

Although a Big Three Auto Manufacturer was not directly involved in this case, the
influence of Ford Motor Company can be felt. Kelsey-Hayes, supplied by Galtaco, was in turn a
supplier of Ford.\footnote{165} One wonders if the peripheral presence of Ford in this case influenced the
court to decide the way it did. To decide otherwise would have left open the possibility of Ford’s
assembly line being shut down if Ford couldn’t find another supplier in a reasonable time.

b. \textit{In Re Rochkind}\footnote{166}

\footnote{161} \textit{See id.} A footnote in the case points out that a survey of the Michigan cases
involving duress revealed that there had never been a decision that explicitly adopted the modern

\footnote{162} \textit{See id. at 797.}

\footnote{163} \textit{See id.}

\footnote{164} \textit{See id.}

\footnote{165} \textit{See id. at 798.} Kelsey-Hayes believed that had it not agreed to the contract,
Ford’s assembly line would have been shut down, resulting in Kelsey-Hayes being dropped from
Ford’s list of qualified suppliers.

In this case, a creditor moved to lift a stay upon its order of foreclosure upon the debtor’s home. The debtor argued that the mortgage and promissory note were unenforceable since they had been agreed to under economic duress. Specifically, the wife of the debtor argued that the mortgage was not enforceable as to her since the creditor coerced her into signing the mortgage. To make matters more interesting, the creditor was then-judge Norman Lippitt. The debtor’s wife claimed that judge Lippitt called her, asking to speak to her husband and allegedly threatening “I can ruin him” in relation to the judge’s dissatisfaction over a business deal between the debtor and Judge Lippitt. The debtor eventually signed a mortgage and promissory note in order to help her husband amend his problems with Judge Lippitt. The debtor claimed she felt that, at the time, no reasonable alternative existed.

The court eventually concluded that Judge Lippitt’s conduct was wrongful, if not illegal. Utilizing the formula for economic duress found in the Kelsey-Hayes case, the court also found that Judge Lippitt’s wrongful threats deprived the debtor’s wife of her free will in executing the mortgage and promissory note. Thus, the court allowed the debtor to avoid the enforcement of

---


168 See id.

169 See id. The debtor’s husband was an attorney practicing in Oakland County, the same county wherein Mr. Lippitt was a judge. Both the debtor and her husband had thought that, if they did not sign the mortgage, the debtor’s ability to practice law in Oakland County would be seriously undermined.

170 See id. at 522.

171 See id.

172 See In Re Rochkind 128 B.R. at 524.

173 See id. at 525.
the agreements against her.\textsuperscript{174}

c. \textit{Hungerman v. McCord Gasket Corp.}\textsuperscript{175}

In \textit{Hungerman}, the plaintiff had been terminated by his employer.\textsuperscript{176} The plaintiff then filed suit alleging wrongful termination.\textsuperscript{177} In its defense, the Defendant pointed to the plaintiff's employment contract, which contained a release clause in which the plaintiff had agreed not to bring suit against the employer on any matter relating to the plaintiff's employment status.\textsuperscript{178} Hungerman, in turn, admitted to signing the release, but contended that it was invalid since he had signed under duress.\textsuperscript{179} Specifically, Hungerman claimed that his employer threatened to withhold his accrued vacation time and paychecks until he signed the release.\textsuperscript{180}

Using the modern formulation of economic duress, the court found that plaintiff had not demonstrated that the alleged threat deprived plaintiff of his free will in signing the contract.\textsuperscript{181} To support this belief, the court pointed out that Hungerman did meet with his attorney to discuss the proposed release before signing it.\textsuperscript{182} Perhaps the court thought that one receiving advice

\textsuperscript{174} See id.
\textsuperscript{176} See Hungerman, 189 Mich. App. at 676.
\textsuperscript{177} See id.
\textsuperscript{178} See id.
\textsuperscript{179} See id.
\textsuperscript{180} See id.
\textsuperscript{181} See Hungerman, 189 Mich. App. at 677.
\textsuperscript{182} See id. at 678.
from an attorney regarding the signing of a contract cannot possibly have been deprived of his free will in agreeing to that contract. This rationale will be applied in the analysis of the General Motors case.

THE DECISION

Decided in the summer of 2000, General Motors Corp. v. Paramount Metal Products Co. was a unique case in that it was the first law suit where a Big Three Auto Maker claimed the economic duress doctrine against one of its suppliers. Prior to this (and explained above in the discussion of the development of the duress and economic duress doctrines), the economic duress doctrine had yet to be applied in a situation like that contained in General Motors.

In the case, plaintiff General Motors Corp. contracted with Paramount for the manufacture of automobile seat frames. GM entered into this contract to guarantee itself a supplier for the seat frames, which are installed into GM vehicles on the assembly line. After agreeing to the contract and performing it for less than a year, Paramount began experiencing financial difficulties. Since Paramount could no longer operate its plant without facing great losses, it asked GM to agree to a $4.4 million retroactive price increase for the parts it had and would supply General Motors with. General Motors, facing a shutdown of its assembly line if

184 General Motors Corp., 90 F. Supp. 2d at 861.
185 See id at 864.
186 See id.
187 See id.
188 See id.
it did not have a supplier of seat frames, reluctantly agreed to the price increase.\textsuperscript{189} Although there is no indication of this in the record, one would assume that GM did discuss signing the price increase agreement with its attorneys before agreeing to it. Two days after finding an alternative seat frame supplier, General Motors brought suit against Paramount.\textsuperscript{190}

In the action against Paramount, General Motors claimed that the price increase it had signed with Paramount was invalid since it was executed under economic duress.\textsuperscript{191} GM advanced this claim on a motion for summary judgment, asking for dismissal of Paramount's claims for breach against GM.\textsuperscript{192}

Relying heavily upon the Blodgett,\textsuperscript{193} Mancino,\textsuperscript{194} and Kelsey-Hayes\textsuperscript{195} decisions, the court held that the accommodation agreement signed between GM and Paramount was signed by GM under duress.\textsuperscript{196} Using these decisions, the court reached its conclusion that a claim of economic duress requires an improper (and not an illegal) threat.\textsuperscript{197} The court placed great emphasis upon GM's expert's testimony that GM would have lost millions of dollars per day if

\textsuperscript{189} See General Motors Corp., 90 F. Supp. at 864.

\textsuperscript{190} See id. at 865.

\textsuperscript{191} See id. The suit also involved seven other counts, none of which truly relate to this paper's subject of the modern economic duress doctrine. See supra, note 24.

\textsuperscript{192} See id.

\textsuperscript{193} See supra, note 71.

\textsuperscript{194} See supra, note 55.

\textsuperscript{195} See supra, note 144.

\textsuperscript{196} See General Motors Corp., 90 F. Supp. 2d at 875-76.

\textsuperscript{197} See id.
they had not agreed to Paramount's request for accommodation.\textsuperscript{198} The court seemed to feel that this repercussion alone was enough to constitute economic duress. Moreover, the court equated Paramount's accommodation agreement as a breach of contract that satisfied the pre-modern economic doctrine's requirement of illegality.\textsuperscript{199} The result of this decision is, in this author's opinion, more of a testament to the influence of General Motors than an exercise of sound legal judgment.

\textbf{ANALYSIS}

A. The Economic Argument Against The Decision

Arguably, most laws formulated in our courts have some rational basis and seem to be intuitive. It is those few decisions that seem counterintuitive that one must question. \textit{General Motors v. Paramount Metal Products Co.} is such a decision. A common conception of economic duress is that only the weaker side of a bargain may claim this defense. This conception is no accident. As explained above, economic duress had its roots in the early doctrine of common law duress. Most often, common law defense applied to those who were physically forced to do something against their will. Thus, the doctrine was designed to protect a weaker party from the demands of the stronger one. The doctrine focused on the dynamics of a relationship involving a stronger party asserting its will upon a weaker party. This hallmark of duress made the transition to economic duress when courts finally decided to extend the doctrine.

The \textit{General Motors} decision, however, turned this paradigm on its head. General Motors, one of the largest employers in the world, was allowed to successfully claim economic

\textsuperscript{198} See id.
\textsuperscript{199} See id.
defense against an opponent roughly 1/10th its size. This makes less sense in light of the power relationship between these two companies. Anyone familiar with the automotive industry understands that the relationship between GM and its suppliers is anything but equal. Basically, GM sets standards for price, quality (the rate of product defects), and delivery. The suppliers, in turn, must conform precisely to each standard or lose the ability to sell to General Motors. In addition to the amount of suppliers contracting with GM, there are hundreds more companies that are also vying for GM dollars. The result is a very tense atmosphere between those companies and suppliers. Both suppliers and non-supplier hopefuls are forced to keep prices as low as possible, with quality as high as possible. Of course, GM benefits enormously from this competitive war between the potential suppliers.

Another side effect of this economic climate is that suppliers are indirectly encouraged to aspire to standards that they cannot actually meet. This competitive atmosphere lures potential suppliers into agreeing to contracts that eventually result in major losses. Paramount had been involved in just such a contract. In order to survive, it had lowered its prices to such a level that it could not make one cent in profits. It did so in order to meet GM’s standards. Paramount claimed that its offer of a price increase in exchange for continued supply of seat frames to GM was the only reasonable thing it could have done. Paramount further claimed that, without the price increase, the losses it would have sustained would have forced it out of business.

When taking the above into consideration, it is clear that GM cannot truthfully claim that it was the weaker party in agreeing to the accommodation agreement. Economically, GM was in such a strong position that it could not lay claim to being forced to sign a particular agreement by a much smaller (and financially weaker) organization.
B. The Legal Argument

The *General Motors* court placed great emphasis upon the fact that GM would have lost millions of dollars per day if it had chosen to find a new supplier rather than agreeing to Paramount's request for a price increase.\(^{200}\) This alone seemed to sway the court into believing that GM was the weaker party and had no choice but to agree to the accommodation agreement suggested by Paramount. The cases cited above, however, point to other factors that tend to make GM's claim of economic duress less credible.

In the *Blodgett* case above, the court stated that "merely taking advantage of another's financial difficulty is not duress."\(^{201}\) Furthermore, the court seemed to indicate that, unless the offending party’s conduct was the cause of the financial distress of the claimant, the claimant could not successfully argue economic duress.\(^{202}\) Although one may argue that Paramount would have caused GM’s financial difficulty, I think it more credible that GM would have been the cause of its own financial difficulty. GM utilizes the modern doctrine of Just-in-time delivery, which guarantees a continuous supply of parts to GM factories as they are needed (and not before). Because it utilizes this system, GM does not contain large stacks of replacement parts that could be used to “cover” in the event of a dispute between GM and a supplier. The Just-in-time (JIT) system results in huge savings to GM because GM doesn’t have to keep large inventory on hand, thus freeing up large amounts of capital. A close analogy would be the refusal of one to carry insurance on his car (where such an act is not illegal) because the savings

\(^{200}\) See *supra*, note 197.

\(^{201}\) See *supra*, note 93.

\(^{202}\) See *supra*, note 94.
outweigh the risks.

The financial distress that would have been caused to GM, then, was actually caused by GM's adoption of the JIT system and not by Paramount. In essence, GM's adoption of the JIT system (and decisions like *General Motors*) results in it making short-sighted business deals with the knowledge that the courts will rescue it in the event of an unplanned occurrence.

In the *Delpina* decision, the court decided that coercive pressure must come directly from the defendant for a claim of economic duress to be valid—it is not enough for that coercive pressure to come from something or someone else.203 As discussed in the proceeding paragraph, however, the pressure for GM to agree to Paramount's request came not from Paramount, but from the JIT system adopted by GM. Had GM kept large inventories of its supplies, it could have simply found another supplier and sworn off Paramount.

This statement is reinforced by the Michigan Supreme Court's decision in *Hackley v. Headley*.204 That court found that a claimant cannot properly claim economic duress when he himself had been responsible for a situation wherein he had to accept the offending party's decision.205 Once again, when this statement is placed into the context of *General Motors*, it is clear that GM had, by using JIT, placed itself into a situation where it could claim that it was at the mercy of its suppliers if a dispute occurred.

---

203 See supra, note 107.

204 See supra, note 123.

205 See supra, note 123. Also consider that GM had the ability to choose from many such suppliers as Paramount, both before and after Paramount asked for price increases. Even in the midst of the "chaos" created by Paramount's demands, GM was still able to find an alternate supplier.
Finally, the *Hungerman* Court found that the plaintiff had not met his burden of showing that the defendant had deprived him of his free will in signing the contract.\textsuperscript{266} The greatest factor in the court's decision was the plaintiff's admission that he had met with his attorney to discuss the contract before signing it.\textsuperscript{207} The court found this to be indicative that the plaintiff had signed the contract of his own free will.\textsuperscript{208}

Applied to the *General Motors* decision, one can intuit that GM, a very sophisticated corporation, would not have signed the Paramount Accommodation Agreement except upon the advice of its lawyers. Thus, an argument could be made that GM did sign the contract of its own free will. This would have, under the *Hungerman* Court's formulation of economic duress, negated GM's claim of economic duress.

**CONCLUSION**

Historically, the economic duress doctrine has been applied to parties who have been forced into agreeing to contracts by their more powerful opponents. The doctrine certainly has its place among other accepted doctrines of law. The latest incarnation of the doctrine, in the *General Motors* case, seems to have expanded the doctrine of economic duress beyond its intended meaning in Michigan. By applying the doctrine to a Big Three Auto Maker against its supplier, it is clear that the *General Motors* court has engaged in the creation of a greatly-modified economic duress doctrine. This new definition places, Ironically, more focus upon the economic and political power of the party claiming it. Now, the doctrine rewards the most

\textsuperscript{206} See supra, note 180.

\textsuperscript{207} See supra, note 181.

\textsuperscript{208} See supra, note 181.
powerful party (the Big Three Auto Manufacturer), allowing it to structure questionable business practices while claiming and receiving protection from the courts for those practices. Although I advocate a return to the older definition of economic duress, I am convinced that this modern, dangerous trend will continue as long as the automotive industry drives the economy of Michigan.