MICHIGAN

David R. Stechow
PLUNKETT COONEY
150 W. Jefferson Ave., Suite 800
Detroit, MI 48226
Phone: (313) 965-3900
Fax: (248) 901-4040
Email: dstechow@plunkettcooney.com

I. MECHANIC'S LIEN BASICS

Contractors, subcontractors, suppliers, and laborers who provide an improvement to real property have the right to record a lien against the property upon which an improvement was provided.[1] An owner must notify everyone that a construction project is about to begin through the notice of commencement of physical improvements to real property.[2] The notice of commencement provides the basic information which a lien claimant needs to perfect its construction lien.

A. Requirements

A subcontractor or supplier must provide a notice of furnishing to the designee and the general contractor identified in the notice of commencement either personally or by certified mail within 20 days after furnishing the first labor or materials. A contractor that has a direct contract with the owner is not required to provide a notice of furnishing to preserve lien rights.[3] A laborer is required to provide a notice of furnishing to the designee and the general contractor either personally or by first-class mail, postage pre-paid, within 30 days after wages were contractually due, but not paid.[4] With respect to withholding benefits, a laborer must provide a notice of furnishing to the designee and the general contractor either personally or by certified mail by the fifth day of the second month following the month in which fringe benefits or withholding from wages were contractually due, but not paid.

All lien claimants must record a claim of lien in the office of the register of deeds for the county where the property is located within 90 days after the lien claimant's last furnishing of labor or materials for the improvement.[5] The claim of lien must have attached to it a proof of service of notice of furnishing if the lien claimant did not have a direct contract with the owner. The lien and proof of service also must be served within 15 days after the date of recording either by service upon the designee, personally, or by certified mail, return receipt requested.

The claim of lien must include the first day of providing labor or materials for an improvement, the last day of providing labor and materials for an improvement, the name of the owner of the property, the legal description, the amount of the contract, and what was received from a contractor (the difference between the amount of the claim of lien) or (with respect to laborers) the hourly rate, including fringe benefits and withholding in the amount owing.

B. Enforcement and Foreclosure

Substantial compliance with the 90-day recording requirement is dealt with on a case-by-case basis as to whether it is sufficient to create a valid lien.[6] Suits to enforce liens must be brought in the circuit court for the county where the real property is located within one year after the date the claim of lien was recorded.[7] The parties to be named in the complaint will be the owner and co-owner, any lessee who is contracted for the improvement, land contract vendees, land contract vendors who have consented to a mortgage and any other person whose interest in the land or improvement is claimed to be subordinate to the construction lien. At the time of filing suit, the lien claimant must record a notice of lis pendens in the register of deeds of the county where the real property is located. Further, the complaint must show that the owner or lessee was provided a sworn statement if one was requested or required.[8]

C. Ability to Waive and Limitation on Lien Rights

An owner of real property shall not require, as part of any contract for an improvement to the real property, that the right to a construction lien be waived in advance of work performed.[9] A waiver obtained as part of a contract for an improvement is contrary to public policy, and shall be invalid, except to the extent that payment for labor and material furnished was actually made to the person giving the waiver. Acceptance by a lien claimant of a promissory note or other evidence of indebtedness from an owner, lessee, or contractor shall not of itself serve to waive or discharge otherwise valid construction lien rights.[10]

II. PUBLIC PROJECT CLAIMS

A. State and Local Public Work

Two different sets of statutes apply to public works contracts. The type of project determines which of the two statutes applies. The Public Works Act applies to all government-owned projects, whether state or local (except for state railway projects), and requires the principal contractor to furnish a labor and materials payment bond on all projects in excess of $50,000.[11] The Michigan Supreme Court has held that this act also applies to public universities that are created by the Michigan Constitution, such as the University of Michigan.[12] However, the court of appeals has held that a building that is being constructed for a private owner for lease to a governmental entity is not a "public building" for purposes of the statute requiring a payment bond in connection with the construction of public buildings.[13]

1. Notices and Enforcement

The Public Works Act specifies that the payment bond is solely for the protection of "claimants" who supply labor or materials to the principal contractor or its subcontractors in the prosecution of the work provided for in the contract.[14] Claimant is defined as a person who furnishes "labor, material, or both, used or reasonably required for use in the performance of the contract."[15]

A party who contracts directly with the principal on the bond is not required to furnish any notice before bringing suit for payment.[16] Thus, direct subcontractors and suppliers are not

required to formally notify the contractor or the government unit either that they are involved in the project or that they have not been paid. A party who does not contract directly with the principal on the bond is required to furnish the principal with a written notice within 30 days after supplying the first labor and material to the project. The notice must (1) state the nature of the materials or labor furnished, (2) identify both the party who contracted for the materials or labor and the site where the labor will be performed or the materials will be delivered.[17] The 30-day-notice period is specific to each new and independent contractual arrangement. A subcontractor or material supplier that fails to protect itself under an earlier agreement regarding a public project may still protect itself under a new and independent agreement by notifying the principal contractor within 30 days of beginning performance on the new contract. However, because each contractual agreement is independent, the notification applies to the new contract only and does not relate back to establish bond act protection for earlier agreements for which the claimant failed to serve timely notice.[18]

B. Claims to Public Funds

A suit may not be filed sooner than 90 days after the claimant last supplied labor or materials to the project.[19] However, the action must be instituted within one year from the date on which final payment was made to the principal contractor.[20] The payment bond is a guarantee by the surety to the obligee (normally, the owner) for the benefit of claimants that the principal (normally, the contractor) will pay the claims of those persons who furnish labor and materials to the construction project.[21] Contractors may choose to require payment bonds from subcontractors to obtain the same protection from unpaid sub-subcontractors and suppliers. Payment bonds also provide assurance to the subcontractors and suppliers that their legitimate bills will be paid. The bonds may be the only source of such assurance on public projects, for which construction liens are not valid.[22]

III. STATUTES OF LIMITATION AND REPOSE

A. Statutes of Limitation and Limitations on Application of Statutes

The statute of limitations for an action involving death, personal injury or property damage against a state licensed architect, state licensed engineer or professional surveyor is two (2) years.[23] The statute of limitations for an action against a contractor arising out of death, personal injury or property damage is three (3) years.[24] The statute of repose against a state licensed architect, state licensed engineer, professional surveyor, and contractor is six (6) years.[25] The statute of repose allows for one (1) additional year to maintain an action after the defect "is discovered or should have been discovered, provided that the defect constitutes the proximate cause of the injury or damage for which the action is brought and is the result of gross negligence on the part of the contractor or licensed architect or professional engineer."[26]

Also, minors' personal injury claims are not tolled under MCL 600.5839.[27]

B. Statutes of Limitation and Limitations on Application of Statutes

The statute of repose for an action involving death, personal injury or property damage against a state licensed architect, engineer, land surveyor or contractor is six (6) years from the "time of occupancy of the completed improvement, use, or acceptance of the improvement . . ."[28]

This statute of repose applies to licensed architects, professional engineers and professional surveyors from any state. Michigan licensure is not required.[29]

The statute of limitations and statute of repose for a breach of contract action relating to a defect in a building improvement are governed by the general statute of limitations for breach of contract actions and are not governed by the professional malpractice and contractor statute of limitations and statute of repose.[30]

IV. PRE-SUIT NOTICE OF CLAIM AND OPPORTUNITY TO CURE

With respect to legal claims being pursued in litigation, Michigan has no statutory or common law requiring pre-suit notice of a claim or an opportunity to cure a defect. With respect to complaints filed against a residential builder's license, once a proceeding has been initiated and necessary repairs have been identified, but not performed, the complainant is required to demonstrate that notice was provided to the licensee describing reasonable times and dates that the residential structure was accessible for the needed repairs.[31] In addition, the complainant shall provide acceptable proof that the repairs were not made within 60 days after the sending of the notice.[32]

V. INSURANCE COVERAGE AND ALLOCATION ISSUES

A. General Coverage Issues

A Comprehensive General Liability ("CGL") insurance policy, in its simplest sense, provides coverage for operations of an entity and for an injury or property damage which may result from operations of the insured which are put to their intended use. These are occurrence-based policies which provide coverage to the insured during the applicable policy period, based upon the time when the act or conduct giving rise to the claim occurs.

B. Trigger of Coverage

As with contract actions, the language of the insurance policy governs. Interpretation of an insurance policy requires a two-step inquiry: (1) a determination of coverage according to the general insurance agreement; and (2) a decision whether an exclusion applies to negate coverage.[33]

The first issue which arises from any construction project is whether an "occurrence" has taken place. The courts generally will look to whether a bodily injury or property damage is caused by an occurrence that takes place in the coverage territory and during the policy period. The definition of "occurrence" requires an "accident."[34] An accident has been defined as a "undesigned contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated, and not naturally to be expected."[35] Currently, no accident occurs when a builder supplies a defective product or performs in an unacceptable manner.[36]

When an insured's defective workmanship results in damage to the property of others, an "accident" exists within the meaning of the standard comprehensive liability policy.[37] This interpretation is consistent with the overall scheme of liability insurance which is to provide coverage for unforeseen events, and not to serve as a substitute for a bond.

Even with an occurrence, construction-related claims also raise the issue regarding the scope of "builders-risk" exclusions within the policy. These exclusions, such as the "your work" exclusion, bar coverage for the insured's work without additional damage. However, the Michigan Supreme Court recently granted leave on the issue of whether defective workmanship constitutes an "occurrence" within the meaning of the applicable commercial general liability insurance policy.[38] While the Court will analyze the definition of an "occurrence," as it stands, the language of the policy governs.

C. Allocation Among Insurers

Where concurrent duties to defend are triggered, allocation of defense costs is typically made on the same basis as allocation of the loss with regard to those policies with a duty to defend.[39] The inquiry should be whether the terms of the policies at issue cover the same loss, the same risk, and the same subject matter. If there is concurring coverage, an analysis should be conducted to determine whether it is appropriate to prorate the costs of defense. Since shares of loss are often governed by contract, applying these same shares to cost of defense makes contractual as well as equitable sense.[40]

Thus, it is often presumed that if there is more than one primary insurer, each will share the duty to defend and prorate their contributions.

VI. CONTRACTUAL INDEMNIFICATION

MCL 691.991 voids an indemnity agreement in a construction contract which purports to indemnify the indemnitee for the consequence of the indemnitee's "sole negligence."[41] It has been held that "sole negligence" means 100% fault for the totality of the personal injury or property damage claim.[42]

Michigan does not require an indemnity provision to expressly state that the indemnitor must indemnify the indemnitee for the consequences of the indemnitee's own (as opposed to "sole") negligence so long as the language of the indemnitee provision, the situation of the parties, and the surrounding circumstances established that was the parties' intent. For example, employment of "all-inclusive" language such as "any" or "all" or "any and all" when referring to claims has been interpreted in Michigan as inclusive of the indemnitee's own negligence.[43]

MCL 691.991 also has been limited to contracts calling for the performance of work on the site and is not, for example, applicable to contracts pertaining to the lease of construction equipment to be used at a job site.[44]

Michigan permits indemnity invalidity language to be severed from an indemnity provision so long as the language which remains complies with MCL 691.991. Thus, for example, an indemnity provision which requires an indemnitor to indemnify the indemnitee for claims caused "in whole or in part" by the negligence of the indemnitee can be validated under the statute by simply severing the words "in whole" from the indemnitee provision.[45]

The Michigan Supreme Court has held that failure to indemnify pursuant to a clear and unambiguous indemnity provision is a distinct breach of contract action from a claim based on the failure to install the structure according to specifications, and that any indemnity action necessarily accrued at a later point.[46]

VII. CONTINGENT PAYMENT AGREEMENTS

A. Enforceability

Michigan courts will enforce a properly drafted "pay-if-paid" provision as a condition precedent to pay downstream subcontractors. Failure to satisfy a condition precedent prevents a cause of action for failure to perform; hence a downstream contractor has no cause of action against an upstream contractor who has not been paid for its work. [47] Moreover, Michigan courts have held that so long as the upstream contractor fulfills any condition that requires it to take active measures to collect money due from the owner/general contractor, downstream subcontractors will be bound to the "pay-if-paid" provision and will only be paid when the upstream contractor is, itself, paid.[48]

B. Requirements

In *Berkel*, the Court clarified that a "pay-if-paid" clause must be carefully drafted and payment by the owner or the upstream contractor must be a specifically acknowledged condition precedent to the upstream contractor's obligation to pay the downstream contractor. Although not expressly provided in the *Berkel* decision, a valid contingent payment provision should: (1) use the term "condition precedent"; (2) avoid language suggesting the upstream contractor is deferring payment to the subcontractor, only; and (3) explicitly state that the downstream contractor will be paid only when the upstream contractor is paid.[49]

VIII. SCOPE OF DAMAGE RECOVERY

A. Personal Injury Damages vs. Construction Defect Damages

For a claim based on deficiencies in the structure itself brought by the party who hired an architect, professional engineer or professional surveyor, the measure of damages is the standard damages awarded in breach of contract actions. Thus, the "benefit of the bargain" will be awarded as damages and all expectation damages that were in the contemplation of the parties at the time of the contract may be awarded. In actions involving personal injuries due to structural deficiencies, all economic and noneconomic damages awarded in ordinary negligence actions are recoverable.

B. Attorney's Fees Shifting and Limitations on Recovery

In Michigan, the general rule is that attorney fees are not recoverable as either costs or damages unless recovery is expressly authorized by contract, statute, court rule, or a recognized exception to the general rule.[50] Exceptions are to be narrowly construed and may include limited situations in which a party has incurred legal expenses as a result of another parties' fraudulent or unlawful conduct.[51]

C. Consequential Damages

Generally, parties may only recover actual damages. Consequential damages are those which a party has reason to foresee as ordinary, natural consequences of a breach when the contract was made. To recover consequential damages, they must be reasonably within the contemplation of the parties at the time they enter into the contract.[52]

D. Delay and Disruption Damages

Delay and disruption damages may be allowed if there is evidence of active interference of the contract by a defendant or other contractors.[53] The plain language of the contract must support the party's contention that these types of claims were outside the scope of plaintiff's duties. When analyzing the plaintiff's claims for delay and disruption, the court is not bound by the plaintiff's choice of labels for the alleged damages.[54]

Pursuant to recent case law, however, a contractor cannot sue a design professional for damages when things go awry on a project due to the alleged negligence of the design professional.[55] Under previous Michigan Law, a contractor could file suit against a design professional to recover damages caused by the design professional's negligence despite the absence of direct contractual privity.[56] In *Keller*, *supra,* the Michigan Court of Appeals held, as a matter of law, a contractor cannot maintain a claim for damages stemming from the design professionals negligence in performing contractual duties on a project where the duties arose from the design professionals contract. Only where the contractor can point to a breach of a duty separate and distinct from the design professional's responsibilities set forth in the contract documents can a contractor maintain a claim against a design professional.

E. Economic Loss Doctrine

In cases involving defective goods, Michigan courts have applied the economic loss doctrine to bar tort theories of recovery where the loss is economic.[57] The economic loss doctrine bars tort remedies where a sale of goods is involved, the only injury is damage to the goods themselves, and the only losses alleged are economic. The doctrine applies even in the absence of contractual privity.[58] The economic loss doctrine has also been applied to a claim for negligent misrepresentation.[59]

In Michigan, the application of the economic loss doctrine has been extended beyond its original application to contracts for the sale of goods.[60] The doctrine has now been applied to

contracts for services or to contracts for mixed goods and contracts that predominantly involve services.[61]

F. Interest

The Michigan judgment interest statute is found at MCL 600.6013 and provides for judgment interest to be awarded only from the date that the judgment was entered. Pre-complaint interest is awardable by the trier of fact as an element of damages in some cases.[62]

G. Punitive Damages

Michigan courts do not permit punitive damages, except as provided by statute.[63] Exemplary damages, on the other hand, are those awarded to compensate for mental anguish, humiliation, outrage or increased injury to the plaintiff's feelings that he or she suffers due to the defendant's willful, malicious, or wanton conduct or reckless disregard for the plaintiff's rights.[64] Exemplary damages are not punitive in nature. Thus, exemplary damages generally are awarded in the context of intentional torts, slander, libel, deceit, seduction, and other intentional, malicious acts.[65]

Exemplary damages generally are not available for breach of a commercial contract.[66] In terms of construction contracts, an allegation of promissory fraud was not sufficiently independent of the contract breach to permit recovery of exemplary damages.[67]

H. Liquidated Damages

Although generally parties may only recover actual damages, contractual liquidated damages provisions have been deemed valid and enforceable elements of construction contracts if the amount of such damages is a reasonable estimate of actual damages and actual damages cannot be predicted with accuracy at the time of formation. Said differently, liquidated damages are recoverable so long as the damages provision is truly a liquidated damages provision and not a punitive damages provision.[68] The plain language of the contract must support the party's contention that these types of damages were contemplated by the parties. Courts will frequently pay deference to the contract language, especially those entered into between sophisticated parties. The question of the reasonableness of the amount to which the parties have stipulated is one of law for the court to answer.[69]

IX. CASE LAW AND LEGISLATIVE UPDATE

A. Content of Contract Does Not Preempt Common Law Legal Duty

Common law governs Michigan tort cases. The rule in Michigan is that if a party fails to perform a contractual obligation, it cannot be held liable to a third party.[70] If a party does perform a contractual obligation, it may have a common law duty to third persons to do so in a non-negligent manner so as to not injure them. Accordingly, the question turns on whether, aside from a contract, a party owed any independent legal duty to a third person.[71]

B. Common Work Area Doctrine

A subcontractor injured on the project may bring a cause of action against the project owner or general contractor if he is able to establish: (1) the defendant, either the property owner or general contractor, failed to take reasonable steps within its supervisory and coordinating authority (2) to guard against readily observable and avoidable dangers (3) that created a high degree of risk to a significant number of workmen (4) in a common work area.[72]

For the project owner to be liable, the plaintiff must prove that the owner "retained control" of the project and that the mere right to control an independent contractor's work is insufficient to establish the "retained control" theory against the owner.[73] Additionally, with respect to element three of the doctrine, the appropriate scope of risk must encompass the worker's use of—or failure to use—equipment available in seeking to limit unavoidable danger inherent in the work environment. "Such formulation of the relevant 'danger' properly focuses on steps taken by the contractor to protect the workers from unavoidable dangers inherent at a construction site."[74]

C. Residential Builders

The Michigan Consumer Protection Act (MCPA) exempts any transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States.[75] Accordingly, licensed residential home builders are exempt from the MCPA because the general transaction of residential home building, including contracting to perform such transaction, is "specifically authorized" by the Michigan Occupational Code.[76]

---

[1] MCL 570.1107.
[2] MCL 570.1108.
[3] MCL 570.1109.
[4] MCL 570.1109.
[5] MCL 570.1111.
[6] *Cent Ceiling & Partition, Inc v Dept of Commerce*, 249 Mich App 438, 440; 642 NW2d 397, 399 (2002), *aff'd* 470 Mich 877 (2004); *Northern Concrete Pipe, Inc v Sinachola Companies- Midwest, Inc*, 603 NW2d 257 (Mich 1999).
[7] MCL 570.1117, MCL 570.1118.
[8] MCL 570.1117.
[9] MCL 570.1115.
[10] MCL 570.1115.
[11] MCL 129.201, *et seq.*
[12] *WT Andrew Co v Mid-State Sur Corp*, 450 Mich 655; 545 NW2d 351 (1996), on remand, 221 Mich App 438; 562 NW2d 206 (1997), *aff'd*, 461 Mich 628; 611 NW2d 305 (2000).
[13] *Milbrand Co v Department of Soc Servs*, 117 Mich App 437, 440; 324 NW2d 41 (1982).
[14] MCL 129.203.
[15] MCL 129.206.
[16] MCL 129.207.
[17] *Id*.
[18] *Grand Blanc Cement Prods v Insurance Co of N America*, 225 Mich App 138; 571 NW2d 221 (1997).
[19] MCL 129.207.
[20] MCL 129.209.
[21] *Kammer Asphalt Paving Co v East China Township Sch*, 443 Mich 176; 504 NW2d 635 (1993).
[22] *Id.*
[23] MCL 600.5805(14). Previously, the Michigan Supreme Court ruled that MCL 600.5839(1) acted as both a statute

of limitations and repose. Accordingly, the Supreme Court imposed a six (6) year statute of limitations as to all claims for personal injury or property damage against a state licensed architect, engineer or contractor. *Ostroth v Warren Regency, GP, LLC*, 474 Mich 36; 709 NW2d 589 (2006). Effective January 1, 2012, the Michigan Legislature took action to return MCL 600.5839(1) to a six (6) year statute of repose, only.

[24] MCL 600.5805(10).

[25] MCL 600.5839(1).

[26] *Id.*

[27] *Smith v Quality Constr Co*, 200 Mich App 297; 503 NW2d 753 (1994).

[28] MCL 600.5839(1).

[29] *Cliffs Forest Products Co v Al Disendro Lumber Co*, 144 Mich App 215; 375 NW2d 397 (1985), appeal denied, 422 Mich 896; 384 NW2d 8 (1986).

[30] The Michigan Supreme Court recently held that the contractor statute of limitations and repose applies to tort actions against contractors for injury to person or property or for defective and unsafe conditions, but actions against contractors for breach of contract, relating to a defect in a building improvement, are governed by the general statute of limitations for breach of contract actions and are not governed by the contractor statute of repose, *Miller-Davis Co v Ahrens Const, Inc*, 489 Mich 355; 802 NW2d 33 (2011) overruling *Michigan Millers Mut Ins Co v West Detroit Bldg Co*, 196 Mich App 367; 494 NW2d 1 (1993).

[31] MCL 339.2411(4)(f).

[32] *Id.*

[33] *Hastings Mut Ins Co v Mosher, Dolan, Cataldo & Kelly, Inc,* Case No. 265621, 2006 WL 1360404 (Mich App, May 18, 2006).

[34] *Id.*

[35] *Hawkeye-Security Ins Co v Vector Construction Co,* 185 Mich App 369; 460 NW2d 329 (1990).

[36] *Id*.

[37] *Radenbaugh v Farm Bureau Gen Ins Co of Michigan*, 240 Mich App 134, 147; 610 NW2d 272 (2000).

[38] *Skansa USA Building, Inc v MAP Mech Contractors, Inc*, 933 NW2d 703 (2019).

[39] *Insurance Co of North America v Forty-Eight Insulations, Inc*, 633 F2d 1212, (6th Cir 1980); *Frankenmuth Mut Ins Co v Continental Ins Co*, 450 Mich 429; 537 NW2d 879 (1995).

[40] *Id.*

[41] The statute reads as follows: A covenant, promise, agreement or understanding in or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance and appliance, including moving, demolition and excavating connected therewith, purporting to indemnify the promisee against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the promisee or indemnitee, his agents, or employees, as against public policy and is void and unenforceable.

[42] *Fischbach-Natkin Co v Power Process Piping, Inc*, 157 Mich App 448; 403 NW2d 569 (1987).

[43] *Paquin v Harnischfeger Corp*, 113 Mich App 43; 317 NW2d 279 (1982).

[44] *Pritts v J.I. Case Co*, 108 Mich App 22; 310 NW2d 261 (1981).

[45] *Trim v Clark Equip Co*, 274 NW2d 33 (Mich App 1978).

[46] *Miller-Davis Company v Ahrens Construction Inc*, 495 Mich 161; 848 NW2d 95 (2014).

[47] *Berkel & Co Contractors v Christman Co*, 210 Mich App 416; 533 NW2d 838 (1995) (sometimes cited as *Christman Co v Anthony S Brown Dev Co*, 210 Mich App 416; 533 NW2d 838 (1995).

[48] *Id.* at 420.

[49] *See generally, Berkel & Co Contractors*, 210 Mich App at 419-420.

[50] *Nemeth v Abonmarche Dev, Inc*, 457 Mich 16; 576 NW2d 641 (1998); *Burnside v State Farm Fire and Cas Co*, 208 Mich App 422; 528 NW2d 749 (1995).

[51] *Brooks v Rose*, 191 Mich App 565; 478 NW2d 731 (1991).

[52] *Kewin v Massachusetts Mutual Life*, 409 Mich 401; 295 NW2d 50 (1980); *Lawrence v Will Derrah & Assoc, Inc*, 445 Mich 1, 516 NW2d 43 (1994).

[53] *Phoenix Contractors, Inc v General Motors Corp*, 1365 Mich App 787; 355 NW2d 673 (1984).

[54] *Johnston v City of Livonia*, 177 Mich App 200; 441 NW2d 41 (1989).

[55] *Keller Construction, Inc, v UP Engineers & Architect, Inc*, 2008 WL 2665113, at *4 (July 8, 2008) lv den 482 Mich 1068; 757 NW2d 500 (2008).

[56] *Bacco Constr Co v American Colloid Co*, 148 Mich App 397; 384 NW2d 427 (1986).

[57] *Neibarger v Universal Cooperatives, Inc*, 439 Mich 512; 486 NW2d 612 (1992).

[58] *Sullivan Industries, Inc v Double Seal Glass Company, Inc*, 192 Mich App 333; 480 NW2d 623 (1991).
[59] *Bailey Farms, Inc v NOR-AM Chemical Company*, 27 F3d 188 (6th Cir 1994).
[60] *Trans Continental Trade and Finance Corp v Besser Co*, Case No. 08-12940, 2009 WL 349357, at *3 (ED Mich 2009); *Rinaldo's Construction Corp v Michigan Bell Telephone Co*, 454 Mich 65, 83; 559 NW2d 647 (1997).
[61] *Scarff Brothers, Inc v Bischer Farms, Inc*, 546 F Supp 2d 473, 487 (ED Mich 2008), rev'd in part on other grounds, 386 Fed App'x 418 (6th Cir 2010).
[62] M Civ J I 53.04 Interest—As Part of Damages.
[63] *Jackson Printing Co v Mitan*, 169 Mich App 334; 425 NW2d 791 (1988).
[64] *Peisner v Detroit Free Press*, 421 Mich 125; 364 NW2d 600 (1984).
[65] *Veselenak v Smith*, 414 Mich 567; 327 NW2d 261 (1982).
[66] *Kewin v Massachusetts Mut. Life Ins Co*, 409 Mich 401; 295 NW2d 50 (1980).
[67] *Tempo, Inc v Rapid Electric Sales and Service, Inc*, 132 Mich App 93; 347 NW2d 728 (1984).
[68] *Moore v St Clair County*, 120 Mich App 335; 320 NW2d 47 (1982).
[69] *Id.*
[70] *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157; 809 NW2d 553 (2011).
[71] *Id.*
[72] *Ormsby v Capital Welding, Inc*, 471 Mich 45; 684 NW2d 320 (2004).
[73] *Candelaria v BC General Contractors, Inc*, 236 Mich App 67; 600 NW2d 348 (1999).
[74] *Dancer v Clark Construction Company, Inc*, 500 Mich 992; 894 NW2d 596, 597 (2017) (Marckman, CJ, concurring).
[75] MCL 445.904(1)(a).
[76] *Liss v Lewiston-Richards, Inc*, 478 Mich 203; 732 NW2d 514, (2007).