

Know Your Business

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You are an important client, friend or business partner of Wright Penning & Beamer. We value our relationship with you, and as a firm, we want to provide pragmatic information to help your business succeed and grow. "Know Your Business" is a firm publication including recent developments in the law and related areas to assist you, the business owner or manager, in being aware of various issues that could impact your business.

STICK 'EM UP! WHEN A CONTRACT MAY BE UNENFORCEABLE BASED ON ECONOMIC DURESS

As Michigan's economy grinds on in a difficult business climate, many industries face low profit margins and rising costs. For many businesses today, the supply chain has become particularly vulnerable to demands for price increases from sole-source suppliers. These difficult everyday business challenges have raised the question of when a contract may be unenforceable based on a defense of "economic duress."

Although a "modern view" of what constitutes economic duress has developed in many jurisdictions, Michigan courts have been reluctant to apply this view. Courts in Michigan have been guided by a more traditional view of when duress is available as a defense to enforcement of certain contracts. There is well-established authority in Michigan that duress exists when one, by the unlawful act of another, is induced to make or perform some act under circumstances which deprive that person of the exercise of free will. Michigan courts have generally stated that duress will not prevail to invalidate a contract entered into with full knowledge of all of the facts, with ample time and opportunity for investigation, consideration, consultation and reflection. Also, the courts have stated that fear of "financial ruin" alone is insufficient to establish a defense of economic duress.

The "modern view" referenced above potentially offers relief to parties who are forced to accept unwarranted price increases. In the case of *Kelsey Hayes v Galtaco*, Kelsey Hayes successfully argued that it had entered into a contractual modification only under economic duress and thus, sought to invalidate the modification. In that case, Galtaco supplied Kelsey Hayes with metal castings. The parties initially operated under a fixed price agreement; but before the agreement's expiration, Galtaco declared it would stop producing castings unless Kelsey Hayes agreed to two separate 30% price increases. Kelsey Hayes claimed that if it did not accept the increases, it would cause its customers' assembly plants to shut down. Kelsey Hayes ultimately agreed to the new prices but later refused to pay Galtaco the higher amount.

Although Michigan courts have been reluctant to recognize the defense of economic duress in contract cases, the development of the just-in-time inventory system prevalent in many of today's industries, including the automotive industry, makes businesses increasingly susceptible to demands that in other jurisdictions would constitute economic duress. We believe the trend toward Michigan courts recognizing and allowing the implementation of this defense is a viable possibility. In the event you face this type of situation with a supplier or other party in the future, please contact us.

RESEARCH AND EXPERIMENTATION CREDITS

The United States has expanded its research and experimentation ("R&E") tax credits and now offers lucrative R&E tax incentives. However, often companies have not taken advantage of the credits and, as a result, are not getting the tax breaks they deserve. As the pace of your business accelerates and competition increases, you may more likely qualify for this source of cash.



The information contained in this publication is meant for informational purposes only and is not intended as legal advice. Laws and their application vary based upon a client's unique facts and circumstances. Wright Penning & Beamer disclaims any responsibility for action taken in reliance on this publication without further consultation and analysis. For questions, please contact us at (248) 477-6300.

What is the R&E Tax Credit? The research and experimentation tax credit rewards companies for investing in innovation and improvements.

Your Benefits Could Be:

- Cash refunds from previously filed income tax returns;
- A reduced effective tax rate;
- A documented approach for claiming tax credits in future years.

Research or Experimentation Checklist. Do you:

- Manufacture products;
- Develop new, improved or more reliable products/processes/formulas;
- Develop prototypes or models (including computer-generated models);
- Design tools, jigs, molds or dies;
- Develop or apply for patents;
- Perform certification tests;
- Conduct testing of new concepts in technology;
- Develop new technology;
- Attempt to use new materials;
- Add new equipment;
- Perform environmental testing;
- Develop or improve production or manufacturing processes;
- Develop, implement or upgrade systems and/or software;
- Develop production control software;
- Improve or build new manufacturing facilities;
- Automate/streamline internal processes;
- Expand resources on outside consultants to do any of the above activities.

If you answered “yes” to any of these questions, you may qualify. Please contact us for more information.