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TAX ABATEMENTS AND PROMISSORY ESTOPPEL: A MATCH NOT MADE IN YPSILANTI

“[T]here’s just so much confusion, you want to say to GM, damn you, for tearing my family apart.”¹

“The consolidation of large-car production in Arlington will allow GM to save about \$800 per car . . . Both the township and GM were hurt by this case. We’d like to see the community realize this matter should not proceed any further.”²

INTRODUCTION

The Township of Ypsilanti was in a symbiotic relationship — in return for long term property tax abatements provided by the municipality, General Motors Corporation (“GM”) provided steady employment for the people of the community. Then things changed. GM decided it would be better to make their cars somewhere else, so they prepared to relocate their operations. In *Charter Township of Ypsilanti v. General Motors Corp.*,³ Ypsilanti sued in an attempt to force GM to keep production and the corresponding jobs in its community. The trial court judge found that plaintiffs sufficiently proved a promissory estoppel claim to bind GM, and enjoined the transfer of production.⁴ The court of appeals reversed,⁵ the Michigan Supreme Court refused to hear the case,⁶ and General Motors shut down Willow Run and transferred the production of Caprice automobiles to a plant in Arlington, Texas.⁷

1. David Lamb, *Portrait of the Recession: Disposable Workers, Jobs Economy*, L.A. TIMES, May 15, 1993, at A1 (quoting the wife of a displaced Willow Run spot welder).

2. Greg Gardner, *Court Refuses Ypsilanti Appeal*, DET. FREE PRESS, Sept. 4, 1993, at 9A (quoting General Motors’ attorney Lee Schutzman, as the injunction against GM closing Willow Run expired and the plant was shut down). Note that General Motors focused on economic concerns, despite a stipulation during trial that the issue of economic necessity was not a basis for the decision to close the facility. See *infra* notes 328-31 and accompanying text (discussing the economic necessity defense).

3. No. 92-43075-CK, 1993 WL 132385 (Mich. Cir. Ct. Feb. 9, 1993).

4. *Id.* at *14.

5. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

6. *Charter Township of Ypsilanti v. General Motors Corp.*, 509 N.W.2d 152 (Mich. 1993).

7. *GM Proceeds With Plant Closing*, WALL ST. J., Sept. 7, 1993, at A4.

This Note explores the decisions of both courts, beginning by examining the use of tax abatements as an economic incentive.⁸ The ineffectiveness and continued popularity of abatements are described in the context of "the race to the bottom."⁹ The focus then shifts to promissory estoppel law, first generally, and then in a brief historical review leading into a description of the precedents which address the application of this equitable doctrine to plant closures.¹⁰

Next, the trial and appellate court opinions are discussed in detail, with a preliminary summary of Public Act 198, the statutory authority for granting tax abatements in Michigan, and a detailed history of the relationship between Ypsilanti and General Motors.¹¹ An in-depth look at the law and reasoning behind the various court opinions is also presented.¹²

The Analysis section begins with a description of why tax abatements are not an effective tool for increasing and maintaining the amount of production in a particular community.¹³ Next, the use of promissory estoppel to prevent plant closures is advocated,¹⁴ leading to the ultimate contention that the trial court was correct in its use of the doctrine to enjoin General Motors' departure from Ypsilanti after the receipt of Act 198 abatements. The case itself is examined by scrutinizing the promise, how it was made, and abuses of discretion by the appellate court in reviewing and reversing the lower court's factual determination that a promise existed.¹⁵ Questions of reasonable reliance by Ypsilanti and the economic necessity defense round out the study of the case.¹⁶ Finally, *Ypsilanti* is compared to precedents which discussed the use of promissory estoppel to prevent a plant closure, as well as to an analogous case on which the appellate court relied, followed by Impact and Conclusion sections discussing the deleterious effects of the decision on the people and community of Ypsilanti.¹⁷

8. See *infra* notes 18-38 and accompanying text.

9. See *infra* notes 39-54 and accompanying text.

10. See *infra* notes 55-143 and accompanying text.

11. See *infra* notes 144-90 and accompanying text.

12. See *infra* notes 191-251 and accompanying text.

13. See *infra* notes 252-69 and accompanying text.

14. See *infra* notes 270-74 and accompanying text.

15. See *infra* notes 275-313 and accompanying text.

16. See *infra* notes 314-31 and accompanying text.

17. See *infra* notes 332-79 and accompanying text.

I. BACKGROUND

A. Tax Abatements

States have used economic incentives to attract businesses since at least 1791, when New Jersey offered tax abatements to Alexander Hamilton to locate his manufacturing plant in that state.¹⁸ The number and type of incentives are limited only by the creativity of the various legislatures who enact them.¹⁹ The use of economic incentives continues to increase.²⁰ Property tax abatements similar to Michigan's Public Act 198 ("P.A. 198")²¹ are the most common form of tax incentive at the local or municipal level.²² Public Act 198, and presumably most local property tax abatements, are designed to encourage businesses to remain or to locate in a particular community²³ by offsetting relatively high property taxes²⁴ in order "to encourage capital investment and job growth . . . by . . . moderniz[ing] or restor[ing] obsolete industrial facilities."²⁵ The legislature amended the Michigan statute to include similar incen-

18. Andrew Kolesar, Note, *Can State and Local Tax Incentives and Other Contributions Stimulate Economic Development*, 44 TAX LAW. 285, 286 (1990). Tax abatement is defined as "[d]iminition or decrease in the amount of tax imposed. Abatement of taxes relieves property of its share of the burdens of taxation after the assessment has been made and the tax levied." BLACK'S LAW DICTIONARY 4 (6th ed. 1990).

19. Martin E. Gold, *Economic Development Projects: A Perspective*, 19 URB. LAW. 193, 193 (1987) (listing real property exemptions, low-interest loans, loan guarantees, grants, sales tax exemptions, reduced energy costs, tax-exempt bond financing, and subsidized rent as incentives used by state and local governments); Kolesar, *supra* note 18, at 287.

During 1993, Mercedes-Benz A.G. was seeking a site for a new production facility. As part of a successful attempt to lure the plant into their state, Alabama Governor Jim Folsom rushed a tax concession law through the state legislature, offered to spend tens of millions of dollars to buy Mercedes vehicles for state use, bought resident's homes and property in order to offer the car maker the exact parcel of land it sought, and at the last minute, agreed to place the company's distinctive emblem on the top of the scoreboard for a televised Alabama-Tennessee football game. E.S. Browning & Helene Cooper, *Ante Up: States' Bidding War Over Mercedes Plant Made for Costly Chase*, WALL ST. J., Nov. 24, 1993, at A1.

20. Kolesar, *supra* note 18, at 286; Mark Taylor, Note, *A Proposal to Prohibit Industrial Relocation Subsidies*, 72 TEX. L. REV. 669, 683 (1994); see Marco Menezes & Lawrence W. Morgan, *P.A. 198: Michigan's Industrial Property Tax Abatement Law: Fortuity or Futility?*, 7 COOLEY L. REV. 139, 139 (1990) (stating that governmental units have been adopting financial incentives to business and industry).

21. MICH. COMP. LAWS §§ 207.551-207.571 (1975).

22. Kolesar, *supra* note 18, at 287; Taylor, *supra* note 20, at 675-76 (citing Gold, *supra* note 19, at 198).

23. Menezes & Morgan, *supra* note 20, at 140; see also Taylor, *supra* note 20, at 675 (indicating that economic incentives generally are used to induce industry to locate, remain, or expand within the grantor's boundaries).

24. Menezes & Morgan, *supra* note 20, at 141.

25. *Id.* at 160.

tives to draw in *new* industrial facilities as well.²⁶ States and communities also use abatements to promote their "pro-business climate" and create the impression that they are actively pursuing business and industry for their constituency.²⁷ "Although no reliable data is available, it has been estimated that the states have given away 'hundreds of millions, perhaps billions of dollars in economic incentives' "28 to persuade industries to relocate to, or remain in, a particular location.

Somewhat surprisingly, experts and commentators generally agree that tax abatements and other incentives play, at best, a minor role in a corporation's location decision.²⁹ A myriad of other factors play into the corporation's decision, most, if not all, weighing more heavily than tax considerations.³⁰ A major component leading

26. *Id.* at 142. The initial formulation of P.A. 198, which only provided for plant rehabilitation, was deemed discriminatory against Michigan firms wishing to expand within the state, and non-Michigan firms wishing to immigrate into the state. *Id.* Accordingly, similar incentives were provided for new industrial construction. *Id.*

27. Kolesar, *supra* note 18, at 287-89; George W. Morse & Michael C. Farmer, *Location and Investment Effects of a Tax Abatement Program*, 39 NAT'L TAX J. 229, 235 (1986); Taylor, *supra* note 20, at 692 (citing MARTIN TOLCHIN & SUSAN TOLCHIN, *BUYING INTO AMERICA* 64 (1988)).

Governments are willing to do more than provide economic incentives in order to appear pro-business. During competition for GM's Saturn production plant, the Illinois legislature passed a mandatory seat-belt law, thus decreasing the chances of auto-maker opposed federal air-bag legislation being enacted and signaling to GM the legislature's willingness to cooperate. Kolesar, *supra* note 18, at 288. During the competition for a Mercedes-Benz facility, South Carolina "promised to move eight endangered red-cockaded woodpeckers in order to overcome environmental problems at its proposed site." Browning & Cooper, *supra* note 19, at A6.

28. Kolesar, *supra* note 18, at 286 (citing Vaughan, *State Tax Incentives: How Effective Are They?*, COMMENTARY, Jan. 1980, at 3). "By 1987, Michigan municipalities granted over 6,000 property tax abatements under PA 198, exempting over \$9,000,000,000 of otherwise taxable property." Menezes & Morgan, *supra* note 20, at 143 n.43 (citing Martin, *Do Property Tax Abatements Make a Difference?*, THE MICH. ASSESSOR, July 1989, at 27).

29. Morse & Farmer, *supra* note 27, at 229; see Kolesar, *supra* note 18, at 285 n.2 (including extensive cite list of works supporting and opposing the idea that tax incentives do not influence location decisions); Browning & Cooper, *supra* note 19, at A6 (stating Mercedes' official position that incentives were not its primary reason for choosing Alabama). *But see* Taylor, *supra* note 20, at 683 (arguing the best evidence of incentives' effectiveness is the frequency of their use).

30. Plant or site availability, transportation costs, labor costs, proximity to raw materials and markets, and quality of public services are all considerations which weigh into location decisions. Paul Barron, *Causes and Impact of Plant Shutdowns and Relocations and Potential Non-NLRA Responses*, 58 TUL. L. REV. 1389, 1395 (1984) (indicating that state regulation of business and the "social wage" costs are the most important considerations in the location decision); see Kolesar, *supra* note 18, at 289-300 (examining factors by analyzing a case study of General Motors' Saturn plant site selection process); cf. Taylor, *supra* note 20, at 683 (arguing economic incentives do play a significant role in location decisions, at least as "tie-breakers") (citing Jack Lyne, *Incentives Are Important, Executives Say, but Business Concerns Drive the Location Process*, 37 SITE SELECTION 282, 283-84 (1992)).

to debate on the topic is the lack of corporations' desire to disclose the *true* weight given to tax considerations.³¹

For a government unit to determine if a tax abatement will be worthwhile for the community, the government unit must conduct a type of cost/benefit analysis.³² Such analysis aids in determining whether "the revenue lost due to tax abatement and other economic incentives plus the increased public expenditure due to the new activity (services plus other grants) is less than the increased revenue generated by the new activity."³³ Tax incentives typically cost the public in two ways. First, the taxing unit will not receive income from the taxes which are waived or reduced by the incentive.³⁴ Second, the amount of governmental services which must be provided will increase because of the demands made by the new business.³⁵ The unit of government which is offering the tax incentive must determine how the combined costs of offering the incentive compare to the revenue or other benefits which will be generated for the area by the recipient of the incentive.³⁶ Essentially, the government must decide if the tax dollars "spent" as a result of the incentive program, return more than the cost of the investment.³⁷ Such analysis often reveals more costs and burdens than benefits.³⁸

31. Kolesar, *supra* note 18, at 293. Even if *no* weight is given to tax considerations, corporations still prosper by allowing or encouraging competition between potential sites to provide the greatest possible incentive. *Id.* The granting of an abatement to an industry which would make the same location decision regardless of the incentive creates a windfall for that company. *See* Menezes & Morgan, *supra* note 20, at 160.

32. *See* Kolesar, *supra* note 18, at 300 (balancing loss of revenue with benefits in an "economic analysis for business development").

33. *Id.*; *see* Morse & Farmer, *supra* note 27, at 229 (concluding that, in granting an abatement, if schools do not receive additional aid, the abatements are economically irrational); Taylor, *supra* note 20, at 683-84 (indicating "positive externalities" must be considered in determining an appropriate recipient of incentives).

34. Kolesar, *supra* note 18, at 300.

35. *See* Gold, *supra* note 19, at 194 (indicating that the need for public transportation or road access is viewed by industry as a substantial problem necessitating public involvement in the project); Browning & Cooper, *supra* note 19, at A6 (stating that all states involved in the competition for a Mercedes production facility were willing to provide a state funded welcome center near the factory and eighteen months of employee-training programs). Some of these costs will prove to be beneficial, even if the industry relocates quickly. *See* Kolesar, *supra* note 18, at 286-87, 311 (indicating grants for worker education and improvements in infrastructure will persist and make the area more attractive to future businesses).

36. Kolesar, *supra* note 18, at 300; *see* Taylor, *supra* note 20, at 679-83 (discussing the potential misallocation of resources and inappropriate selection of aid recipients if a proper balancing is not conducted) (citing PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, *ECONOMICS* 590-91 (13th ed. 1989) and PAUL WONNACOTT & RONALD WONNACOTT, *ECONOMICS* 434-50 (1979)).

37. Kolesar, *supra* note 18, at 300.

38. *Id.* at 298 ("[M]ost analysts conclude that the disadvantages outweigh the benefits."). *But*

B. Tax Abatement Popularity — "A Race to the Bottom"

Despite the general consensus that tax abatements play only a minor role in a corporation's location decision, use of tax abatements continues to rise, remaining the most popular incentive at the local level.³⁹ In part, this can be attributed to the "common sense" view that if a corporation can save tax dollars at one location, that location will appear more attractive than one where no money can be saved.⁴⁰ The lack of empirical evidence on the subject exacerbates this perception.⁴¹ The lack of evidence can be attributed in part to the governing bodies themselves, who may desire political unaccountability in case of negative repercussions resulting from a failed abatement plan.⁴² "Economic incentives . . . will live on, mainly because the political rewards are still tempting. . . . The fact that the effects of the incentive programs may not be felt, or at least documented, until years later, if at all, gives the government more freedom to participate in the competitions for new businesses."⁴³ This competition has been termed "the race to the bottom."⁴⁴

see Menezes & Morgan, *supra* note 20, at 150 (noting that a Department of Commerce study indicated that the economic benefits would outweigh costs for most communities granting an abatement); Taylor, *supra* note 20, at 682-83 (indicating that lack of quantifiable data makes the determination of relative costs and benefits of incentives difficult, if not impossible, to determine).

39. See *supra* notes 18-28 and accompanying text (explaining the popularity of tax abatements).

40. See *supra* note 31 (discussing the link between tax abatements and corporate savings).

41. See *supra* note 39, Kolesar, *supra* note 18, at 300.

42. See Kolesar, *supra* note 18, at 306-07 (governing bodies put a different spin on abatements for different interest groups in an attempt to appease many different constituents). "There seems to be very little accountability over [the granting of abatements]. Nobody does any follow-up, and nobody does any cost benefit analysis." Browning & Cooper, *supra* note 19, at A1 (quoting Douglas Woodward, associate professor of economics at the University of South Carolina).

There are other political dangers associated with the granting of governmental subsidies. They include the unnecessary concentration of decision-making power in the hands of government officials, which is exacerbated by the delegation of such power to appointed, rather than elected, officials. Taylor, *supra* note 20, at 686-87. This "allows elected officials to disclaim responsibility for the actions of the bureaucrats they empower." *Id.* at 687. Accountability is further reduced by the common practice of combining incentives from a variety of different entities. *Id.* Finally, terms of incentive packages are frequently kept secret in order to prevent competing states or communities from using the information to improve their bids. *Id.* at 688.

One additional factor leading to the lack of information on the effects of incentives may be the short term view taken by politicians and corporations, focusing on immediate gratification, such as reelection or current quarter gains at the expense of long-term profitability. Kolesar, *supra* note 18, at 306, 311.

43. Kolesar, *supra* note 18, at 307.

44. The race to the bottom occurs where governmental units give away larger and larger incentives to corporations in an attempt to out do one another, until they have given away so much that

In the race to the bottom, governing bodies give away greater and greater incentives, all the while approaching, or tragically surpassing, the break-even point of the burden/benefit analysis.⁴⁶

The widespread availability of subsidies has created an environment in which cities and states attempt to outbid each other to attract large industrial plants. The corporations planning new plants openly encourage interested cities to match other cities' offers, and thus [,] the corporations extract ever higher concessions from the municipalities.⁴⁶

The ability in today's market to move capital quickly and easily intensifies the race to the bottom.⁴⁷ Corporations concerned with only the bottom line⁴⁸ can relocate in the name of profit almost spontaneously, without regard for the consequences which befall the community affected by the decision.⁴⁹ Where no legal mechanism

they are no longer benefiting from the presence of the corporation. Daniel R. Fischel, *The "Race to the Bottom" Revisited: Reflections on Recent Developments in Delaware's Corporation Law*, 76 NW. U. L. REV. 913, 913-23 (1982); Kolesar, *supra* note 18, at 310.

The race to the bottom occurs in many contexts. See, e.g., Alan E. Garfield, Comment, *Evaluating State Anti-Takeover Legislation: A Broadminded New Approach to Corporation Law or "A Race to the Bottom"?*, 1990 COLUM. BUS. L. REV. 119, 125-28 (applying a "shareholder welfare" standard to takeover legislation); Richard L. Revesz, *Rehabilitating Interstate Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environmental Regulation*, 67 N.Y.U. L. REV. 1210, 1213-47 (1992) (challenging the "race to the bottom" argument as questioning federal environmental statutes); Clark D. Stith, Note, *Federalism and Company Law: A "Race to the Bottom" in the European Community*, 79 GEO. L.J. 1581 (1991) (arguing that the European Commission has laid a foundation for the race in its efforts to harmonize company law).

45. See Kolesar, *supra* note 18, at 307-08 (recognizing that economic incentives will continue to be offered despite resulting burdens).

Too many states and localities are currently engaged in the "race to the bottom." They are competing for how much they can arrange for their local citizens to give away in subsidies, lower wages, and damage to the environment, not how much they can be sure of gaining in return; they are competing for how fearful and meagerly paid, not how skilled and secure, the work force of their state or area is going to be. Admittedly, local governments are often responding to forces over which they have little control.

Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty, and America's Eroding Industrial Base*, 81 GEO. L.J. 1757, 1781-82 (1993) (citations omitted).

46. Taylor, *supra* note 20, at 677.

47. Ansley, *supra* note 45, at 1764.

48. "One near legendary formulation by a steel executive that captures this ethic in all its utter reasonableness and perversity goes something like this: 'We are not in this business to make steel. We're in it to make money.'" *Id.* at 1764 n.20.

49. "Large conglomerates have no particular attachment to a given facility or community . . ." Barron, *supra* note 30, at 1393; see also Ansley, *supra* note 45, at 1767 (stating that the devastating effect of the collapse of the steel industry in Youngstown, Ohio is compared by people in the community to the news of the bombing of Pearl Harbor) (citing Staughton Lynd, *Towards a Not-For-Profit Economy: Public Development Authorities for Acquisition and Use of Industrial Property*, 22 HARV. C.R.-C.L. L. REV. 13, 16-17 (1987)). Many corporations will also pit communities against one another in a bidding war in order to maximize incentives. *Id.* at 1774;

exists to bind the corporation to a community which has offered economic incentives,⁵⁰ it may only be a matter of time until a plant closure becomes a harsh reality with which the community must deal.⁵¹ This Note focuses on one community's attempt to deal with this predicament⁵² through the use of the legal system,⁵³ and the equitable doctrine known as promissory estoppel.⁵⁴

C. Promissory Estoppel Law Generally

Promissory estoppel is a method by which one who makes a promise to another on which that person relies by altering their position, is prevented from denying the enforceability of the promise because it failed to contain the elements of a contract.⁵⁵ This seemingly fair and simple principle of equity explains any number of early decisions which were nearly, or sometimes completely, inexplicable

Taylor, *supra* note 20, at 677 ("The corporations planning new plants openly encourage interested cities to match other cities' offers, and thus the corporations extract ever higher concessions from the municipalities.").

50. See Taylor, *supra* note 20, at 701-12 (proposing federal regulations to limit industrial incentives).

51. See Lee Hamilton, et. al., *Hard Times and Vulnerable People: Initial Effects of Plant Closings on Autoworkers' Mental Health*, 31 HEALTH & SOC. BEHAV. 123 (1990) (discussing the human impact of plant closures).

52. There is a paradox underlying this case, and tax abatements generally, which is laid out very nicely in a *Detroit Free Press* editorial.

[If it is ruled that] General Motors, having accepted a tax abatement for its Willow Run assembly plant, cannot now close the plant without compensating Ypsilanti Township, that will force a rethinking of what abatements mean and will undermine the abatement program. You have to wonder whether a business would ever accept another abatement if it represents a binding promise to the community.

And . . . if it is ruled that GM took on no obligation when it accepted the abatement, the case will pretty well prove that abatements do not give communities the development tools they were supposed to represent. Then you have to wonder whether any community, seeing how unenforceable the promises associated with an abatement can be, would ever again grant one.

Either way, the state will be forced to face what has been obvious to us for some time: that the abatement law has not done for Michigan what it was supposed to do

Willow Run Shows Why Tax Abatements Don't Work, DET. FREE PRESS, Feb. 11, 1993, at 12A.

53. See *infra* note 144 and accompanying text (indicating Ypsilanti filed a lawsuit to prevent the closure of the Willow Run production facility).

54. See *infra* note 147 and accompanying text (noting that Ypsilanti based their prayer for relief in equity on promissory estoppel grounds).

55. LAURENCE P. SIMPSON, CONTRACTS § 61 (2d ed. 1965).

The doctrine of [promissory] estoppel rests upon a party having, directly or indirectly, made assertions, promises or assurances upon which another has acted under such circumstances that he would be seriously prejudiced if the assertions were suffered to be disproved, or the promises or assurances to be withdrawn.

Maxwell v. Bay City Bridge Co., 2 N.W. 639, 646-47 (Mich. 1879).

under traditional theories of consideration.⁵⁶ Moreover, promissory estoppel is an excellent illustration of the expansion occurring in contract law, for promissory estoppel is based on the principle of *reliance*, which underlies and creates the unfairness sought to be relieved.⁵⁷

The doctrine of promissory estoppel, and reliance as a basis for recovery, faced vehement opposition during the late nineteenth century from some of the greatest legal scholars of all time.⁵⁸ The doctrines were criticized as being incompatible with the laissez-faire economics of the time, as well as with the bargain theory of consideration.⁵⁹ This represented a change in outlook from the previous century, when reliance played a major role in the pre-contract action of *assumpsit*,⁶⁰ as well as in the formation of simple contracts.⁶¹ Despite the open hostility toward reliance in the late 1800s,

56. JOHN D. CALAMARI & JOSEPH M. PERILLO, *CONTRACTS* § 6.2 (3d ed. 1987) (providing examples).

57. There is much debate among commentators regarding whether reliance is truly the definitive element in promissory estoppel. See, e.g., Edward Yorio & Steve Thel, *The Promissory Basis of Section 90*, 101 *YALE L.J.* 111 (1991) (discussing whether the true basis of enforcement is on the promise, or the reliance). For an argument that the entire conceptual basis of contract law which gave rise to promissory estoppel has "moved on," and that promissory estoppel is no longer an appropriate basis for recovery, see Jay M. Feinman, *The Last Promissory Estoppel Article*, 61 *FORDHAM L. REV.* 303 (1992) [hereinafter Feinman, *Promissory Estoppel*] (using Yorio & Thel as the framework for the discussion). For an economic based theory, see Daniel A. Farber & John H. Matheson, *Beyond Promissory Estoppel: Contract Law and the "Invisible Handshake"*, 52 *U. CHI. L. REV.* 903, 905 (1985) (expressing the idea that promissory estoppel has been extended to the point that "any promise made in furtherance of an economic activity is enforceable").

58. Oliver Wendell Holmes said reliance "would cut up the doctrine of consideration by the roots, if a promisee could make a gratuitous promise binding by subsequently acting in reliance on it." *Commonwealth v. Scituate Sav. Bank*, 137 *Mass.* 301, 302 (1884). For a detailed history of the development of the doctrine, see Benjamin F. Boyer, *Promissory Estoppel: Principle From Precedents: I*, 50 *MICH. L. REV.* 639 (1952) [hereinafter Boyer, *Principle From Precedents*].

59. See Michael B. Metzger & Michael J. Phillips, *Promissory Estoppel and Reliance on Illusory Promises*, 44 *Sw. L.J.* 841, 844-45 nn. 16-24 (1990) [hereinafter Metzger & Phillips, *Reliance*] (quoting authors and different perspectives of the reliance principle and laissez-faire doctrine).

60. *Assumpsit* was an early equitable doctrine meaning that the defendant undertook to do something, and then did it to the plaintiff's detriment. 1 E. ALLAN FARNSWORTH, *FARNSWORTH ON CONTRACTS* § 1.6 (1990) [hereinafter FARNSWORTH]. The doctrine allowed for the assumption of a duty to act, or a promise, from the facts of a case, and represented an effort by common law courts to move into the Chancellor's equitable territory. See Judy B. Sloan, *Quantum Meruit: Residual Equity in Law*, 42 *DEPAUL L. REV.* 399, 417-26 (1992) (discussing the development of *assumpsit*). See generally F. B. Ames, *The History of Assumpsit*, 2 *HARV. L. REV.* 1 (1888) (relating the history of express *assumpsit*).

61. Metzger & Phillips, *Reliance*, *supra* note 59, at 842-43 (citing 1 SAMUEL WILLISTON & GEORGE J. THOMPSON, *A TREATISE ON THE LAW OF CONTRACTS* § 139, at 502 (2d ed. 1936)); P. S. ATYAH, *THE RISE AND FALL OF FREEDOM OF CONTRACT* 185 (1979); Jay M. Feinman, *Promissory Estoppel and Judicial Method*, 97 *HARV. L. REV.* 678, 679 (1984) [hereinafter Feinman,

in several categories of cases, the courts allowed recovery for the promisee's reliance on gratuitous promises, also known as donative promises.⁶² Because of the promisor's intent to give something and receive nothing in return, the gratuitous promise cases did not meet the contractual criteria of consideration.⁶³ The cases in which courts enforced promises, despite the lack of consideration, included promises within the family,⁶⁴ promises to convey land,⁶⁵ gratuitous bailments,⁶⁶ and charitable subscriptions.⁶⁷ As the twentieth century

Estoppel and Judicial)).

62. FARNSWORTH, *supra* note 60, § 2.19.

63. Consideration is one element of contract formation. *Id.* § 1.6. It is most easily seen as the *quid pro quo*, or exchange of value made between the parties. *Id.* Each side must give up something in return for what they receive from the contract. *Id.*

64. Early decisions like *Kirksey v. Kirksey*, 8 Ala. 131 (1845), and *Hamer v. Sidway*, 27 N.E. 256 (N.Y. 1891) (discussed in CALAMARI & PERILLO, *supra* note 56, § 4.5) exemplify the "old" method of forcing cases into traditional doctrine. The cases are readily understood, and in fact make logical sense, when analyzed in terms of *Ricketts v. Scothorn*, 77 N.W. 365 (Neb. 1898), which recognized the lack of consideration in a promise from a grandfather to his granddaughter that he would support her financially should she decide to refrain from working. The court enforced the promise against the grandfather's estate, despite the lack of consideration, by extending the doctrine of estoppel *in pais* (equitable estoppel) from representations of fact relied on, to promises detrimentally relied on. *See, e.g.* CALAMARI & PERILLO, *supra* note 56, § 6.2(a).

65. Although this situation generally arises in a family context, courts have taken two interesting approaches to avoid using reliance as a basis for recovery. One method is "an analogy from the law of gifts, treating the entry upon the land and making improvements as the equivalent of physical delivery of a chattel." CALAMARI & PERILLO, *supra* note 56, § 6.2(b). Additionally, courts have treated the making of improvements as "good consideration in equity." *Id.* The distinction between consideration at law and at equity seems strange at best, and indeed it is now recognized that these decisions are based on promissory estoppel. *Id.*

66. Early gratuitous bailment cases also showed the requisite conflict between ideas of consideration and reliance. The distinction drawn was that between *misfeasance* and *nonfeasance*. In these cases, if the promisor (to procure insurance for another, or some similar scenario) completely fails to act, and never takes possession, it will be nonfeasance, and no liability will attach. Should the promisor act negligently, or fail to live up to a promise whose performance was begun by taking possession, it will be misfeasance, and contractual liability will attach. For a similar distinction between misfeasance and nonfeasance, see FARNSWORTH, *supra* note 60, § 1.6. Many courts have recognized that the misfeasance cases are properly decided under promissory estoppel, and have so concluded, falling in with the trend to recognize reliance as a basis for recovery. CALAMARI & PERILLO, *supra* note 56, § 6.2(c). Accordingly, many nonfeasance cases will still result in no liability, but are justified on the grounds that reliance cannot be reasonable if the bailee has not taken possession. *Id.*

67. Charitable subscriptions have consistently been enforced in this country, the only difference between the cases being which tenuous theory supported the decision. CALAMARI & PERILLO, *supra* note 56, § 6.2(d). The underlying theme is the strong public policy favoring enforcement of such a promise. *Id.* The use of promissory estoppel seems at first glance to be a tailor-made solution. *Id.* Yet, it may fall short due to the inability to show detrimental reliance on the part of the charity receiver, because it does not act differently than it would have without receiving the promise. *Id.* This difficulty, and the policy considerations, prompted the *Restatement (Second) of Contracts* to mandate that charitable prescriptions be *per se* enforceable under promissory estoppel, thus ending the litany of poorly supported decisions. *Id.*

progressed, this accumulation of cases forced the recognition⁶⁸ and establishment of reliance as an acceptable basis for recovery.⁶⁹ Samuel Williston is credited with coining the phrase "promissory estoppel,"⁷⁰ although it was Arthur Corbin who won promissory estoppel's inclusion in the initial *Restatement of Contracts*.⁷¹ Although the doctrine gained "official" acknowledgement, many judges were reluctant to recognize promissory estoppel.⁷²

1. Early Promissory Estoppel Cases

Promissory estoppel as a method to enforce promises relied on to the promisee's detriment moved beyond the limited settings noted above, and into the commercial setting in *Drennan v. Star Paving Co.*⁷³ In *Drennan*, a general contractor relied on a sub-contractor's implied promise not to revoke a bid when calculating the total bid that the general contractor submitted to a potential customer.⁷⁴ Because the subcontractor not only had reason to expect the contractor to rely on his bid, but wanted him to rely on the bid, and because the general contractor became bound by submission of the bid to the customer, the court held the general contractor must be allowed to

68. An early academic endeavor recognizing the use of reliance as a basis of recovery was L. L. Fuller & William R. Perdue, Jr., *The Reliance Interest in Contract Damages* (pts. 1 & 2), 46 YALE L.J. 52 (1936), 46 YALE L.J. 373 (1937), called "one of the greatest of all law review articles" in Feinman, *Promissory Estoppel*, *supra* note 57, at 303.

69. "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." RESTATEMENT OF CONTRACTS § 90 (1932).

70. Benjamin F. Boyer, *Promissory Estoppel: Requirements and Limitations of the Doctrine*, 98 U. PA. L. REV. 459, 459 n.1 (1950) [hereinafter Boyer, *Requirements and Limitations*] (citing 1 SAMUEL WILLISTON, *THE LAW OF CONTRACTS* § 139, at 308 (1st ed. 1920)).

71. See GRANT GILMORE, *THE DEATH OF CONTRACT* 60-64 (1974) (discussing the contrast between section 75, the traditional 'Holmesian' view of strict consideration, and section 90). Gilmore highlights Corbin's success, which was won simply by bringing in a tremendous list of cases imposing contractual liability which would not fit the section 75 definition of consideration and challenging the Restaters to explain the cases under the Restaters' definitive compendium of the common law without the inclusion of a substitute for consideration. *Id.* at 62-64. Section 90 was included. *Id.* at 64; see Metzger & Phillips, *Reliance*, *supra* note 59, at 848-49 (discussing the elements and application of section 90).

72. See, e.g., *James Baird Co. v. Gimbel Bros., Inc.*, 64 F.2d 344, 346 (2d Cir. 1933) (holding that promissory estoppel should be confined to the donative promise setting). Here, again, we see a well respected jurist, Learned Hand, arguing against the use of promissory estoppel. See *supra* notes 58-69 and accompanying text (discussing the widespread opposition to the doctrine).

73. 333 P.2d 757 (Cal. 1958). This case is also an excellent example of a type of case (contractor/subcontractor bids) where promissory estoppel has received a tremendous amount of use. See CALAMARI & PERILLO, *supra* note 56, § 6.5(a).

74. *Drennan*, 333 P.2d at 760.

rely on the promise made by the subcontractor.⁷⁵ Promissory estoppel prevented the subcontractor from breaking his promise to do the work agreed to for the price agreed to, after the general contractor relied on the promise. The *Restatement (Second) of Contracts* explicitly accepted the result from *Drennan* in Section 87,⁷⁶ and also made various changes to the text of *Restatement* Section 90.⁷⁷

The extension of the doctrine continued, as promissory estoppel was soon used to enforce indefinite promises in *Hoffman v. Red Owl Stores, Inc.*⁷⁸ In *Hoffman*, the court held that promissory estoppel does not require reliance so comprehensive as to qualify as an offer that would ripen into a contract, should the offer be accepted.⁷⁹ More controversially, the *Hoffman* court held that equating promissory estoppel with a breach of contract action is a mistake.⁸⁰ This was one of the first cases indicating that promissory estoppel was on its way to becoming a separate and distinct theory of recovery.⁸¹ The extension of the doctrine continued further, as courts became willing to use promissory estoppel to enforce even the arguably illu-

75. *Id.* This, in effect, created an option contract through detrimental reliance, rather than partial performance. JOHN E. MURRAY, MURRAY ON CONTRACTS § 43, at 126 (3d ed. 1990).

76. RESTATEMENT (SECOND) OF CONTRACTS § 87(2) illus. 6 (1981).

77. The text of section 90 was modified for the RESTATEMENT (SECOND). It reads:

- (1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee . . . and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.
- (2) A charitable subscription or a marriage settlement is binding under Subsection (1) without proof that the promise induced action or forbearance.

Id. § 90.

It has been argued that the changes in the text, including the deletion of the "definite and substantial character" of the reliance, as well as the addition of a limitation on damages "as justice requires," is evidence of the increasing trend to base recovery on reliance. Feinman, *Promissory Estoppel*, *supra* note 57, at 305-06.

78. 133 N.W.2d 267, 273 (Wis. 1965) (holding that the indefiniteness was sufficient to indicate a lack of intent to be bound, yet promissory estoppel would support a claim despite the absence). For a discussion of *Hoffman*, see Bruce A. Coggeshall, Note, *Contracts: Reliance Losses: Promissory Estoppel as a Basis of Recovery for Breach of Agreement to Agree: Hoffman v. Red Owl Stores, Inc.*, 51 CORNELL L.Q. 351 (1966).

79. *Hoffman*, 133 N.W.2d at 275.

80. *Id.*

81. See Farber & Matheson, *supra* note 57, at 907-45 (documenting the decreased role of reliance in promissory estoppel decisions and proposing a new economic based theory of recovery under the doctrine); Michael B. Metzger & Michael J. Phillips, *The Emergence of Promissory Estoppel as an Independent Theory of Recovery*, 35 RUTGERS L. REV. 472, 508-50 (1983) [hereinafter Metzger & Phillips, *Independent Theory*] (describing the growth of the doctrine of promissory estoppel); cf. GILMORE, *supra* note 71, at 94 (arguing that contract and tort will eventually be swallowed up by one great theory of civil liability).

sory promise.⁸² "From its humble origins as a substitute for consideration in donative promise cases, this reliance-based doctrine has come to enjoy application in a wide variety of contexts."⁸³ Many commentators have argued for further extension of promissory estoppel in order to protect an even greater number of future plaintiffs.⁸⁴

2. *Promissory Estoppel and Plant Closures*

Despite the continued growth and expansion of the doctrine, one application of promissory estoppel which has *not* been recognized is as a method to prevent plant closures.⁸⁵ The United States Court of Appeals for the Sixth Circuit declined the opportunity to extend the equitable doctrine to such a case in *Local 1330, United Steel Workers of America v. United States Steel Corporation*.⁸⁶ In *Local*, the

82. See, e.g., *Hunter v. Hayes*, 533 P.2d 952 (Colo. Ct. App. 1975) (applying promissory estoppel to a case where there was a meeting of the minds); *Grouse v. Group Health Plan, Inc.*, 306 N.W.2d 114, 116 (Minn. 1981) (holding that a promise for an employment at will contract, which is necessarily illusory, is sufficient to support a promissory estoppel claim). These cases are discussed in Metzger & Phillips, *Reliance*, *supra* note 59, at 856-63 (arguing for the acceptance of promissory estoppel protection for those detrimentally relying on illusory promises).

83. Metzger & Phillips, *Reliance*, *supra* note 59, at 841 (citations omitted). For a limited list of situations allowing recovery based on promissory estoppel, see CALAMARI & PERILLO, *supra* note 56, § 6.3 nn. 85-90 and accompanying text (listing various types of cases which have allowed recovery based on promissory estoppel); FARNSWORTH, *supra* note 60, § 2.19 n.27 (providing a list of types of cases allowing recovery based on promissory estoppel).

84. It has been argued that promissory estoppel was created, and is properly applied, in order to protect the ability to rely on promises in an economic setting. Farber & Matheson, *supra* note 57, at 904-05, 925-30. The ability to trust, where trust is essential, must be protected, and promissory estoppel is the appropriate vehicle for that goal. See *id.* at 925-30 (discussing promissory obligations and economic benefits in ongoing relationships). The importance of trust, and its value to society, form the basis of the entitlement to rely on promises made in an economic setting. *Id.* Accordingly, "any promise made in furtherance of an economic activity is enforceable." *Id.* at 905, cited in *State Bank of Standish v. Curry*, 500 N.W.2d 104, 108 (Mich. 1993), the Michigan Supreme Court's recent statement on the law of promissory estoppel.

85. *Charter Township of Ypsilanti v. General Motors Corp.*, No. 92-43075-CK, 1993 WL 132385, at *13 (Mich. Cir. Ct. Feb. 9, 1993) (holding that the closing of a plant before the expiration of a collective bargaining agreement did not constitute breach of agreement based on ground of promissory estoppel) (citing *Abbingdon v. Dayton Malleable, Inc.*, 561 F. Supp. 1290 (S.D. Ohio 1983), *aff'd*, 738 F.2d 438 (6th Cir. 1984); *Local 1330, United Steel Workers of Am. v. United States Steel Corp.*, 631 F.2d 1264 (6th Cir. 1980)).

86. 631 F.2d 1264 (6th Cir. 1980). The opinion cites the district court, stating:

United States Steel should not be permitted to leave the Youngstown area devastated after drawing from the lifeblood of the community for so many years. Unfortunately, the mechanism to reach this ideal settlement . . . is not now in existence in the code of laws of our nation. . . . [T]his Court has found that no contract or enforceable promise was entered into by the company and . . . there is clear evidence to support the company's decision that the plants were not profitable.

Id. at 1266.

plaintiffs alleged that promises were made by the United States Steel Corporation in oral statements made and repeated over the company "hotline," which consisted of telephones within the plants strategically located so employees could hear pre-recorded management policy statements.⁸⁷ Amid much speculation that the Ohio and McDonald Works plants in Youngstown, Ohio would be shut down in the fall of 1977, U.S. Steel management began a series of "hotline" messages indicating that the plant was not scheduled to be closed.⁸⁸ However, the messages did announce that steps would need to be taken to improve the plants' profitability, and that profit-making was essential to keeping the plants open.⁸⁹ Over the course of time, the messages did indicate a supposed turn around in profitability.⁹⁰ In late 1979, statements were made to the effect that the plants were again profitable,⁹¹ and there were no plans for a shut-down.⁹² Despite these declarations by the corporation, plans for the cessation of operations at both facilities were commenced. The plaintiffs filed suit in an attempt to prevent the plant closure based on, among other theories, promissory estoppel.⁹³

The district court rejected the plaintiff's promissory estoppel claim on three grounds.⁹⁴ The appellate court found most compelling the fact that "there [was] clear evidence to support the company's decision that the plants were not profitable"⁹⁵ and as such, "[t]he condition precedent of the alleged contract and the promise of profitability of the Youngstown facilities was never fulfilled, and the actions in contract and for detrimental reliance cannot be found

87. *Id.* at 1270 n.3.

88. *Id.* at 1270.

89. *Id.*

90. *Id.*

91. *Id.* at 1273 (quoting statements made by, among others, David Roderick, C.E.O. of U.S. Steel).

92. *Id.*

93. *Id.* at 1266.

94. First, the district court found that none of the statements relied on by the plaintiffs constituted a definite promise to keep the plant open, even if it did become profitable. *Id.* at 1277. The appellate court did not discuss this issue. Second, the statements relied upon were made by public relations people, not corporate officers, and therefore, were not binding. *Id.* The appellate court did not discuss this, either. Third, the condition precedent of the promise, the increased profitability, never came about, and the promise was therefore, unenforceable. *Id.* The court relied heavily on this argument. *Id.*

95. *Id.* The term profitability had to be considered in light of normal corporate accounting procedures, and using plaintiff's definition would be unreasonable under the circumstances. *Id.* at 1278-79. The court, in adopting the district court opinion, also expressed its aversion to using its own view of profitability, rather than that of the corporation. *Id.* at 1278.

for plaintiffs.”⁹⁶ The court, relying on Section 90 of the *Restatement (Second)*,⁹⁷ also held that the plaintiffs could not have detrimentally relied on the promise, as it was not within “reasonable expectancy” for the defendants to keep the plant open under the plaintiff’s definition of profitability.⁹⁸ In sum, there was no enforceable promise because a condition precedent to the promise was not met, reliance on the “promise” would not have been reasonable, and the court would not order the plant to stay open when economic necessity mandated its closing.⁹⁹ Accordingly, the district court decision against the plaintiffs was affirmed.

A similar claim was analyzed in *Abbingdon v. Dayton Malleable, Incorporated*,¹⁰⁰ with similar results. In *Abbingdon*, a steel production facility was faced with heavy losses and a contemplated shutdown.¹⁰¹ The management conducted a tent meeting near the facility in order to address the employees.¹⁰² Company president Ladehoff first described the financial difficulties being experienced by the defendant, and then described the “first of several decisions that we must make as a company.”¹⁰³ The first option presented was the closing of the plant in order to bring to a halt the losses being suffered.¹⁰⁴ Ladehoff then stated that the second choice was to invest in the facility, modernize it, and convert to producing nodular

96. *Id.* at 1277. This is the only rationale presented by the trial court which is given due weight and explicitly endorsed by the Court of Appeals. Note that it assumes the existence of a valid and enforceable promise.

97. For the text of Section 90, see *supra* note 69.

98. *U.S. Steel*, 631 F.2d at 1279. Plaintiffs attempted to define profitability as the “gross profit margin,” which considered only the variable costs of operation in relation to the revenues generated by the plant. *Id.* at 1277. The defendants, on the other hand, also factored in the fixed costs of the operation. *Id.* These factors, such as depreciation of equipment, selling expenses, administrative charges, etc., must be subtracted from the gross profit. *Id.* The court found this to be a reasonable business practice for a company operating more than one facility, and under this calculation, the liabilities of the plants exceeded their assets by a substantial margin. *Id.* The court declared itself loathe to substitute its view of profitability for that of a business, and found the existence of a reasonable basis to determine that the plant was not profitable. *Id.* at 1277-78.

99. *Id.* at 1282 (discussing the economic necessity of closing the plant).

100. 561 F. Supp. 1290 (S.D. Ohio 1983).

101. *Id.* at 1292.

102. *Id.* at 1293.

103. *Id.* at 1306. Note that these were oral representations made on a subject already covered by a written contract, and as such, are prone to difficulties with the parol evidence rule. *Id.* at 1296; see Michael B. Metzger, *The Parol Evidence Rule: Promissory Estoppel's Next Conquest?*, 36 VAND. L. REV. 1383, 1437-65 (1983) (discussing the possible extension of the doctrine of promissory estoppel to override the parol evidence rule).

104. “I do not want to close this plant, but by the same token I cannot continue with an operation that loses millions of dollars each year.” *Abbingdon*, 561 F. Supp. at 1297 (statement of Mr. Ladehoff, the company president).

iron.¹⁰⁵ This statement was qualified with the announcement that such a decision would need to be approved by the board of directors.¹⁰⁶ The meeting was continued with the proviso that the workers must be willing to make concessions¹⁰⁷ in order to win the Board's approval. Finally, the meeting was concluded with the sentiment that, "[i]t's not going to be easy for us either, but I'm confident that with the 4 [sic] points that I've outlined we have at least a chance to make this plant successful once again."¹⁰⁸

The District Court for the Southern District of Ohio held that the statements did not constitute a definite promise to continue operations, nor to modernize the facility.¹⁰⁹ Additionally, the court reviewed various press releases distributed by the company, and found that they fell into two categories. First, there were those which simply recited factual information, i.e., the Board's approval of the \$5 million investment to convert the plant to nodular iron; the decision to purchase new equipment; and production goals.¹¹⁰ The second group consisted of those statements which were characterized as merely " 'congratulatory' insofar as they comment favorably on employee enthusiasm for and dedication to efforts to keep the plant operational."¹¹¹ Neither category was found to constitute a promise under the standard enunciated by the *Restatement (Second) of Contracts*.¹¹² Finally, in a footnote, the court found that even if there was a promise, there was no detrimental reliance, as required by the doctrine.¹¹³ Accordingly, the court held the plaintiff's claim under promissory estoppel was without merit.¹¹⁴

In a somewhat analogous case concerning collective bargaining rather than plant closures, the United States District Court for the Southern District of New York found that statements such as "we're partners," "we look forward to growing together," and a statement of a "common objective" did not constitute a promise suf-

105. *Id.*

106. *Id.*

107. Four specific contract modifications were deemed necessary, and were later incorporated into an agreement, the specifics of which are not significant here. *Id.*

108. *Id.* (concluding remarks by company president Ladehoff).

109. *Id.* The court was not convinced that any of the statements could reasonably be expected to induce action or forbearance, and thus, were not legally sufficient promises. *Id.*

110. *Id.* at 1298.

111. *Id.*

112. *Id.* For the text of Section 90 of Restatement (Second), see *supra* note 69.

113. *Abbingdon*, 561 F. Supp. at 1298 n.21.

114. *Id.* at 1298.

ficient to support a promissory estoppel claim in *Marine Transport Lines, Inc. v. International Org. of Masters, Mates, & Pilots*.¹¹⁵ The statements were made by the plaintiffs during labor negotiations.¹¹⁶ The plaintiffs were attempting to convince the defendant union's members in their employ to agree to wage and benefit reductions needed for the plaintiffs to retain a Navy contract.¹¹⁷ In a counter-claim filed by the defendants, the union asserted that the plaintiff's statements induced the defendants to make concessions during collective bargaining in return for the future renewal of a collective bargaining agreement.¹¹⁸ In addition to holding the statements insufficient to create the necessary promise,¹¹⁹ the court found that this was not a case in which injustice could only be avoided by enforcement, as required by the *Restatement (Second)*.¹²⁰ Accordingly, the defendant's counter-claim grounded in promissory estoppel was dismissed.¹²¹

3. *Promissory Estoppel in Michigan*

The State of Michigan has long recognized promissory estoppel "as an equitable remedy . . . employed to alleviate an unjust result of strict adherence to established legal principles."¹²² The common law has clearly established the necessary elements through a series of cases on the subject.¹²³

115. 636 F. Supp. 384, 391 (S.D.N.Y. 1986).

116. *Id.* at 386.

117. *Id.* Marine Transport indicated that the Navy Sealift Command would not renew their contract with Marine Transport unless labor costs were reduced. *Id.* Marine Transport also informed the union that they believed the loss of the Navy contract would force Marine Transport into bankruptcy. *Id.*

118. *Id.* at 390. The initial claim filed by the plaintiffs sought a declaratory judgment that the collective bargaining agreement between the parties had expired. *Id.* at 385.

119. The fact that the statements were made by experienced negotiators during the course of collective bargaining convinced the court that no promise was made. *Id.* at 391.

120. The court indicated that the Union's own actions brought about the expiration of the contract, and that it would be unjust to allow them to use equity in order to prevent that expiration. *Id.*

121. *Id.*

122. *Charter Township of Ypsilanti v. General Motors Corp.*, No. 92-43075-CK, 1993 WL 132385, at *11 (Mich. Cir. Ct. Feb. 9, 1993).

123. *See Oxley v. Ralston Purina Co.*, 349 F.2d 328, 334 (6th Cir. 1965) (holding that the doctrine of equitable estoppel required that oral agreement be enforced); *Motobecane Am. Ltd. v. Patrick Petroleum Co.*, 600 F. Supp. 1419, 1422 (E.D. Mich. 1985) (holding that more is needed than merely an alleged promise for estoppel to apply), *aff'd*, 791 F.2d 1248 (6th Cir. 1986); *State Bank of Standish v. Curry*, 500 N.W.2d 104, 108 (Mich. 1993) (determining that the theory of promissory estoppel requires that promise is clear and definite); *Pursell V. Wolverine-Pentronix, Inc.*, 205 N.W.2d 504 (Mich. 1973) (applying equitable estoppel to the statute of frauds); *Dumas*

In order for a promise to be enforceable under . . . promissory estoppel, there must be a (1) promise that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promise[e], (2) which in fact produced reliance or forbearance of that nature, (3) in circumstances such that the promise must be enforced if injustice is to be avoided.¹²⁴

This was the theory of law for almost twenty years, until a Michigan Supreme Court decision in *State Bank of Standish v. Curry*¹²⁵ made various alterations.¹²⁶

Curry involved a suit by the State Bank of Standish to recover the collateral for a note on which the Curry's had defaulted.¹²⁷ The Curry's counter-claimed based on promissory estoppel,¹²⁸ arguing that the statements made by a bank officer, in conjunction with prior dealings, amounted to a promise to renew loans the Curry's had previously received from the bank, thereby allowing them to continue in the dairy business.¹²⁹ When the Curry's met with bank officers to discuss their loans for the current year, the conversation

v. Auto Club Ins. Ass'n, 425 N.W.2d 480, 490 (Mich. Ct. App. 1988) (setting forth the elements of promissory estoppel), *rev'd on other grounds*, 473 N.W.2d 652 (Mich. 1991); Nygard v. Nygard, 401 N.W.2d 323, 327 (Mich. Ct. App. 1986) (setting forth the elements of a claim of promissory estoppel); Schipani v. Ford Motor Co., 302 N.W.2d 307, 310 (Mich. Ct. App. 1981) (listing elements of a theory of promissory estoppel); McMath v. Ford Motor Co., 259 N.W.2d 140, 142 (Mich. Ct. App. 1977) (recognizing that promissory estoppel can be invoked to defeat a defense of the statute of frauds); The Vouge v. Shopping Centers, Inc., 228 N.W.2d 403, 405 (Mich. Ct. App. 1975) (determining that jury should decide question of promissory estoppel); Association of Hebrew Teachers v. Jewish Welfare Fed'n, 233 N.W.2d 184, 187 (Mich. Ct. App. 1975) (discussing reasoning behind application of theory of promissory estoppel); Timko v. Oral Roberts Evangelistic Ass'n, 215 N.W.2d 750, 752 (Mich. Ct. App. 1974) (discussing the necessary reliance on the part of the promisee to invoke theory of promissory estoppel).

124. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *11 (citing *Timko*, 215 N.W.2d at 752).

125. 500 N.W.2d 104 (Mich. 1993).

126. *Timko* was decided in 1974, and *Curry* in 1993, in the interim between the *Ypsilanti* trial court decision and appellate reversal. See *infra* notes 128-43 and accompanying text (discussing the breadth and substance of the changes in Michigan promissory estoppel law, as well as the applicability to the Circuit Court decision).

127. *Curry*, 500 N.W.2d at 106.

128. *Id.* The note was for loans the Curry's would need to continue the operation of their dairy farm. *Id.* at 105. At the time of the promise, the Curry's were considering a governmental buy out plan, under which they would sell their herd and cease operations in the dairy business, debt-free. *Id.* at 105-06.

129. Beginning in 1975, the Curry's received funds annually from the bank which were used for the operation of their farm. *Id.* at 105. Early in each year, they would go to the bank to discuss their needs, and confer with bank personnel regarding the loan. *Id.* The bank would then complete the paperwork, and call the Curry's back to sign the promissory note in March or April. *Id.* Any remaining balance from the previous year would be added to the new loan. *Id.* As collateral, the bank held a security agreement on all of the Curry's personal property, which was worth at least twice the value of the loan. *Id.*

was held with reference to the possibility that the plaintiffs would enter a government buy out program¹³⁰ and cease their dairy operations.¹³¹ To this end, Mr. Curry asked if the bank would continue to support them, should they remain in the business.¹³² The bank officers "responded that the Currys were doing a good job and had made all their payments and [] there was no reason to worry about their future in the dairy business because the bank would support them."¹³³ Relying on this promise, the Curry's did not submit a serious bid to the government program,¹³⁴ and when the bank refused to issue a new loan, the Curry's were forced to default on the note.¹³⁵

In *Curry*, the Michigan Supreme Court relied on the *Restatement's* definition of a promise, which "is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made."¹³⁶ The Michigan Supreme Court agreed with the Court of Appeals that "the *sine qua non* of the theory of promissory estoppel is that the promise be clear and definite,"¹³⁷ and that it must be distinguished from a statement of opinion or a prediction of future events.¹³⁸ In order to determine the existence or scope of a promise,

130. *Id.* at 106.

Farmers submitted selling bids to the government. If accepted, the government purchased the dairy herd and the farmer agreed not to reenter the dairy business for five years. If the Currys had submitted such a bid and it had been accepted, the Currys most likely would have received sufficient compensation to pay their debts and produce a profit.

Id. at 112 n.1 (Riley, J., dissenting).

131. *Id.* at 106.

132. *Id.*

133. *Id.*

134. The bid submitted by the Curry's was more than twice as high as the amount they had determined would be competitive while still providing them with a profit. *Id.* at 106 n.2.

135. *Id.* at 106.

136. *Id.* at 108 (citing RESTATEMENT (SECOND), *supra* note 69, § 2). The court also noted that: [T]he word 'promise' is commonly and quite properly also used to refer to the complex of human relations which results from the promisor's words or acts of assurance, including the justified expectations of the promisee and any moral or legal duty which arises to make good the assurance by performance.

Id. at 108 n.7 (citing RESTATEMENT (SECOND), *supra* note 69, § 90 cmt. a). *Cf.* Charter Township of Ypsilanti v. General Motors Corp., No. 92-43075-CK, 1993 WL 132385, at *12 (Mich. Cir. Ct. Feb. 9, 1993) (providing a somewhat different definition), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993). "The fundamental element of promise seems to be an expression of intention by the promisor that his future conduct shall be in accordance with his present expression, irrespective of what his will may be when the time for performance arrives." *Id.*

137. *Curry*, 500 N.W.2d at 108. The Court could not, however, agree with the court of appeals that the promise in this case did not meet that standard. *Id.*

138. *Id.* (citing Farber & Matheson, *supra* note 57, at 933).

the court should look to the words and actions of the parties, the nature of the relationship between them, and the facts and circumstances surrounding the "promise."¹³⁹ Additionally, it should be noted that the Court recognized that a promise may be stated orally or in writing.¹⁴⁰ The promise may be in words or inferred wholly or partially from conduct, considering the course of dealing and performance established between the parties.¹⁴¹ The entire analysis must be made under an "objective standard to ascertain whether a voluntary commitment has been made."¹⁴² Using this assessment, the Court found that the proper place for the determination of the existence of a promise by the bank was with the jury, and reinstated the verdict for the plaintiffs because it was supported by law.¹⁴³

II. SUBJECT OPINION

A. *Introduction to the Cases*

On February 9, 1993, the Michigan Circuit Court in Washtenaw County enjoined General Motors Corporation from transferring production of Caprice sedans, as well as Buick and Cadillac station wagons, to any plant other than the Willow Run facility in Ypsilanti, Michigan.¹⁴⁴ This order followed a suit by the Charter Township of Ypsilanti¹⁴⁵ brought against GM as a result of a February 1992 announcement that GM intended to transfer automobile assembly operations to a plant in Arlington, Texas.¹⁴⁶ Ypsilanti al-

139. *Id.* at 109.

140. *Id.* at 108.

141. *Id.* (citing Farber & Matheson, *supra* note 57, at 932).

142. *Id.* at 109.

143. *Id.* at 111.

144. Charter Township of Ypsilanti v. General Motors Corp., No. 92-43075-CK, 1993 WL 132385 (Mich. Cir. Ct. Feb. 9, 1993); *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993); see Halle Fine Perrion, Comment, Charter Township of Ypsilanti v. General Motors Corp.: *The Politics of Promissory Estoppel Run Amok*, 43 CASE W. RES. L. REV. 1475 (1993) (arguing that the trial court's opinion was erroneous).

145. "Washtenaw County joined the suit as a plaintiff and joined in the township contract theories as a third party beneficiary, as well as asserting a theory of injunctive relief based upon an alleged violation of the tax abatement statute." *Id.* at *1. For a thorough discussion of third party rights and remedies under promissory estoppel claims, see Michael B. Metzger & Michael J. Phillips, *Promissory Estoppel and Third Parties*, 42 Sw. L.J. 931 (1988) [hereinafter Metzger & Phillips, *Third Parties*].

The state of Michigan was involuntarily added as a necessary party after the trial court determined that the State's position (as expressed in an amicus brief filed by the Attorney General) would be altered by its inclusion. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *1.

146. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *1.

leged that GM obtained two twelve year tax abatements on the Willow Run facility by making various agreements with the township, and that closing Willow Run prior to the end of the abatements would violate the agreements.¹⁴⁷ The plaintiffs brought forth five theories for relief, including: 1) breach of a contract created by the tax abatement statute, 2) breach of a contract created by the conduct of the parties before and during the application and approval process, 3) promissory estoppel, 4) unjust enrichment, and 5) misrepresentation.¹⁴⁸

B. Public Act 198 — The Tax Abatement Statute

The tax abatements in question were created under a statute passed by the Michigan Legislature in 1974¹⁴⁹ to draw industries which “have the reasonable likelihood to create employment, retain employment, prevent loss of employment, or produce energy in the community in which the facility is situated.”¹⁵⁰ Known as Public Act 198, the law involves a two step process. Initially, power lies exclusively with the municipality, which must create an “industrial development district,” a “plant rehabilitation district,” or both.¹⁵¹ Establishment of the district is completed by a formal resolution of the local governing body defining the boundaries of the parcel or parcels of land which constitute the district.¹⁵² After this action is taken by the municipality, industries may file an application for an Industrial Exemption Certificate, provided merely that their facility is located within the zone established by the municipality.¹⁵³ The municipality then conducts a hearing and either approves or denies

147. *Id.*

148. *Id.*

149. MICH. COMP. LAWS § 207.551-.571 (1975). In 1974, Chrysler Corp. was in a desperate financial situation. Menezes & Morgan, *supra* note 20, at 140. Poised on the brink of insolvency, Chrysler threatened to discontinue rehabilitation of its Mack stamping plant in Detroit. *Id.* at 140-41. This would have resulted in a loss of 5,000 jobs for the community. *Id.* at 141. Owing to the poor state of Michigan's economy, legislators determined that a plan was needed which would encourage Chrysler to invest the capital to protect the jobs in Detroit. *Id.* Property tax abatement was seen as the answer, and P.A. 198 passed easily in the state legislature. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *2; Menezes & Morgan, *supra* note 20, at 141; see Taylor, *supra* note 20, at 676-77 (discussing the Michigan statute and the Chrysler Corporation situation).

150. MICH. COMP. LAWS § 207.559(2)(e) (1975).

151. *Id.* § 207.554; Menezes & Morgan, *supra* note 20, at 142.

152. MICH. COMP. LAWS § 207.554(1) (1975); Menezes & Morgan, *supra* note 20, at 143.

153. Menezes & Morgan, *supra* note 20, at 144-45.

the application.¹⁵⁴

When the application is approved, the second step commences, and it is sent to the State Tax Commission for further consideration.¹⁵⁵ The State Treasurer and the Department of Commerce provide their insight to the Tax Commission,¹⁵⁶ who may then grant or deny the application.¹⁵⁷ If the municipality denies the application initially, an appeal process is available to the applicant, and the Tax Commission may grant approval over the municipality's objection.¹⁵⁸ Regardless of the method of approval, the municipality *alone* makes the decision as to the length of the abatement,¹⁵⁹ choosing any amount of time less than twelve years.¹⁶⁰ This makes the particular facts and circumstances surrounding each company's dealings with the local governing body critical.

C. *Factual Background Regarding General Motors and Ypsilanti*

Within ninety days of the passing of P.A. 198, General Motors had organized a group who was ready to seek abatements under the new statute.¹⁶¹ The pattern established by this group in their dealings with Ypsilanti Township is central to the understanding of this case, as the pattern was followed for the next fifteen years in approving a total of eleven separate abatements, worth a combined total of over \$1.3 billion.¹⁶² Following an initial "in-house" meeting

154. *Id.* at 145. In fact, nearly all of the abatements applied for are granted. *Id.* at 142.

155. MICH. COMP. LAWS § 207.556 (1975).

156. "If the application would result in abatements which in the aggregate exceed 5% of the total SEV of the municipality, the State Tax Commission . . . must determine whether its granting of the certificate would 'substantially impede' the operation of the affected governmental units." *Charter Township of Ypsilanti v. General Motors Corp.*, No. 92-43075-CK, 1993 WL 132385, at *2 (Mich. Cir. Ct. Feb. 9, 1993) (citing MICH. COMP. LAWS § 207.559(1)), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

157. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *2. "As a practical matter, the State Tax Commission has never refused to grant an abatement application after the municipality recommended approval." *Id.*

158. The state, acting through the Tax Commission, has the power to grant the abatement over the objection of the municipality, and has in fact done so on a number of occasions. *Id.* The rationale behind these decisions is that once the municipality has created the Industrial Development District, an eligible applicant has the right to take advantage of the abatement. *Id.*

159. This gives the municipality the power to limit the operation of the abatement, should it be granted over their objection through the appeal process. *Id.* at *3.

160. MICH. COMP. LAWS § 207.566 (1975).

161. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *3.

162. *Id.* at *4. This total reflects abatements for Willow Run, as well as the Hydra-Matic facility, which is an adjacent plant. *Id.* at *3. The initial encounter between GM and Ypsilanti in

for General Motors staff, the corporation invited select members from the township's officers to meet for an "informal workshop."¹⁶³ GM then held another internal meeting in order to determine what information needed to be revealed to the Township.¹⁶⁴ After making their conclusion, GM held a meeting with the entire Ypsilanti Township Board,¹⁶⁵ which was followed by a tour of the plant and lunch.¹⁶⁶ After formally filing an application, General Motors met with various school districts in the area to explain the purpose of the Act, and alleviate fears that the tax abatement would lead to a decrease in the amount of tax revenue available to the schools.¹⁶⁷ Shortly thereafter, "the Ypsilanti Township Board voted unanimously in favor of . . . [the] application . . . [which] received final approval by the State of Michigan."¹⁶⁸

In 1981, as GM sought another of the P.A. 198 abatements, one of the township trustees¹⁶⁹ expressed concern that General Motors

the Act 198 context concerned an abatement for Hydra-Matic, but the same procedure and course of dealing were followed regardless of which facility GM was seeking the abatement. *Id.* at *5.

163. *Id.* at *3. General Motors stated:

The purpose of the meeting was the discussion of Public Act 198 with the representatives of the Township and to advise them of our intentions to file an application

A review was made of Public Act 198 explaining the reason for the Act which was to increase jobs or maintain employment levels in Michigan and encourage business to invest in new plants and equipment. A review of our plant operations . . . was also given. Also at this meeting it was agreed that further discussion must be held with the entire Ypsilanti Township Board who must finally act on our application from a local level.

Id.

164. This information was determined to be proprietary, as it involved future project costs and new product lines, but it was deemed necessary to be relayed to Ypsilanti in order to comply with the statutory provisions. *Id.*

165. The content of the meeting included a history of plant operations, aerial photographs of the plant and its surrounding properties, discussion of current business level, past employment figures, projected future employment figures, contemplated changes in the automobile market, and the impact of such changes on the employment at the plant. *Id.* at *4. There was also a discussion of the importance of P.A. 198, and how it related to future production and employment at the facility. *Id.* Finally, the proposed rehabilitation and rearrangement of the plant were examined. *Id.*

166. *Id.*

167. "No concern was given on behalf of any of these administrators." *Id.*

168. *Id.*

Approval of that application was the first of what turned out to be eleven approved applications for tax abatements on the two plants over the next fifteen years. Ypsilanti Township was among the first municipalities in the State to create an industrial development district State-wide, General Motors has been one of the most frequent recipients of [Public] Act 198 subsidies, having received 122 such abatements on its various Michigan facilities.

Id.

169. He was Wesley Prater, later to become Township Supervisor. *Id.* at *5.

was not committed to maintaining employment levels in Ypsilanti.¹⁷⁰ The plant manager replied with a letter to the entire Board, reading in part:

The purpose of this letter is to reassure you that it is not our intention to transfer production operations to other Hydra-Matic Division plant locations; the net affect [sic] of which would have a negative impact on the employment levels at our Ypsilanti location. In this case, as in the past, we are dedicated to retain and/or increase jobs at Ypsilanti and will maintain this dedication in the future. We intend to keep this facility a viable operation for the community and General Motors.¹⁷¹

The specific abatements at issue in this case, granted in 1984 and 1988, followed the course of conduct detailed above.¹⁷² The 1984 abatement was sought in relation to a modification of the Willow Run Plant to produce "H" model cars.¹⁷³ The application indicated that GM expected the change to create 200 new jobs, and retain 4,300 jobs already in existence.¹⁷⁴ Unfortunately, the public reaction to "H" cars was less than favorable,¹⁷⁵ and GM subsequently decided to produce a new rear-wheel drive "B" version of the Caprice model.¹⁷⁶ Although production associated with the alteration would

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at *6. The demise of the "H-Car" can be attributed to two factors, its styling, and its antiquated platform. Interview with Jason Reyes, Automotive Consultant, *Car and Driver Mag.*, in Chicago, Ill. (Dec. 28, 1994). During the late 1970's and early '80's, while the competition in economy class cars grew, the market was penetrated by technologically advanced, fuel efficient vehicles from around the world. *Id.* Rather than update the H car, GM fought back with new models. *Id.* Accordingly, today's Caprice is no more technologically advanced than it was when it was introduced in 1979. *Id.* To make matters worse, the recent "re-skin" of the old platform was an aesthetic failure. *Id.* Automotive critics are unanimous in their dislike for the new appearance. *Id.* "The Caprice likely failed because it looks like a whale, and with its antiquated platform, it drives like one too." *Id.*

176. "Importantly, the decision to make this investment in Willow Run was made before General Motors pursued or even investigated the possibility of an Act 198 tax abatement for the proposed improvements." *Charter Township of Ypsilanti v. General Motors Corp.*, No. 92-43075-CK, 1993 WL 132385, at *6 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993). The court found that the decision to invest in Willow Run was widely known to the public, and had been detailed in the local media before the township was ever approached by GM. *Id.* The court stated that it appeared GM simply assumed that this abatement would be issued pursuant to the party's prior course of conduct, and that the facts indicated that "General Motors was going to invest in Willow Run regardless of the township's reaction to the tax abatement application and the township knew it." *Id.* This becomes relevant, in that "the 1988 abatement was not intended by either General Motors or Ypsilanti Township to be an inducement to make the investment in the plant which was the subject of the application." *Id.*

not produce new jobs, GM claimed that it would retain 4,900 existing jobs.¹⁷⁷ At the hearing to determine the acceptability of General Motor's application for an abatement relating to the new production, several key statements were made. Mr. Harvey Williams read a prepared statement on behalf of General Motors¹⁷⁸ which concluded with the assertion, "[u]pon completion of this project and favorable market demand, it will allow Willow Run to continue production and maintain continuous employment for our employees."¹⁷⁹ Mr. Russel Hughes, the resident comptroller, followed with a brief presentation explaining that GM's decreasing market share resulted in loss of production jobs at plants throughout the United States.¹⁸⁰ He also described the situation at Willow Run as stable over the preceding several years, and commented that GM had been maintaining a consistent pattern with about 5,000 employees at the facility.¹⁸¹ Mr. Williams then concluded by asking the Board to "join the corporation in the kind of relationship we have in . . . assuring future investments in our Plant."¹⁸²

The Township Assessor made his recommendation for approval to the Board in what the courts considered an extremely important fashion. "Based on the past history in dealing with the people of General Motors[,] they've always done what they said they would do and they've kept the jobs there and they've kept the plant operating"¹⁸³ After hearing both sides, the Board unanimously approved the applications for the maximum twelve years authorized by statute.¹⁸⁴ Following Ypsilanti's approval, the State Tax Commission asked for the county's position on the matter. The county indi-

177. *Id.* at *7 (quoting section 10 of the abatement application).

178. General Motors attempted to claim that no one below the level of chief executive officer of the corporation could make such a binding statement. *Id.* at *14 n.47. The court found this not to be true, as the statement had been reviewed by corporate headquarters. *Id.* Additionally, and embarrassingly for GM, similar binding commitments had been made in other states by lower level officials. *Id.*

179. *Id.* at *7. Mr. Hughes, the Willow Run Comptroller, prepared the statements, as well as graphs and charts for presentation to the Board at a public hearing suggested by Wesley Prater to "educate" new members of the Board, as recent elections brought in new members who had not dealt with GM in the past. *Id.* at *6-7.

180. *Id.* at *7.

181. *Id.*

182. *Id.*

183. *Id.* (tending to show the strong reliance placed on past dealings and course of performance by the Township, thereby making reliance on this alleged promise reasonable).

184. There were two abatements being applied for concurrently, one for Willow Run, and one for Hydra-Matic. *Id.* at *8.

cated that it would support local unit decisions, provided there was compliance with "both the spirit and the letter of the law."¹⁸⁵ The State Tax Commission then approved the application, and another abatement was granted to GM.¹⁸⁶

By late 1991, demand for Caprice automobiles was so low that GM decided to close down one of its Caprice production plants.¹⁸⁷ After considering "proposals" from the municipalities which could be affected by the shut-down, namely Ypsilanti, Michigan, and Arlington, Texas, and the plants located in each of those communities, GM provided the notice required by the federal WARN Act,¹⁸⁸ closed Willow Run, and transferred production to the Arlington facility.¹⁸⁹ The Charter Township of Ypsilanti promptly brought suit against GM in an attempt to enjoin the transfer, or alternatively, recover money damages.¹⁹⁰

D. *The Trial Court's Opinion*

The trial court began its analysis in *Charter Township of Ypsilanti v. General Motors Corp.* by examining the possibility that the tax abatement statute could have created contractual obligations.¹⁹¹ After determining that the legislature *could* have created a contract,¹⁹² the court found that it did not,¹⁹³ and admonished the Leg-

185. *Id.* The county adopted this resolution prior to the application for the abatements in question, and it appears their position was the same for both the 1984 and 1988 abatements. *Id.*

186. "On August 7, 1989, the tax commission . . . issued an Industrial Facilities Exemption Certificate for the period 'beginning December 30, 1989 and ending December 30, 2003.'" *Id.* (citing Plaintiff's Township Ex. 4-9).

187. *Id.* GM had a plant in Arlington, Texas which was running two shifts per day, while Willow Run maintained one shift per day. *Id.*

188. Worker Adjustment and Retraining Notification Act, 29 U.S.C.A. § 2102 (1988).

189. *Ypsilanti, v. No. 92-43075-CK*, 1993 WL 132385, at *8.

190. *Id.* at *1.

191. No. 92-43075-CK, 1993 WL 132385 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

192. The court found that a state may create a binding contract with an industry receiving a subsidy, pursuant to the United States Supreme Court decision in *Indiana ex rel Anderson v. Brand*, 303 U.S. 95, 99 (1935). *Id.* at *9.

193. The court focused its inquiry on the statute itself, as well as the cases and administrative decisions interpreting it. *Id.* at *8-11. Because the Act never used the term "contract," or other similar language, which would show an intent on the part of the Legislature to make a mutually binding agreement, there was no enforceable contract. *Id.* at *9. Additionally, contractual remedies were not provided for in the statute, further indicating the lack of intent for the parties to be bound. *Id.* The Township focused on specific language found on the abatement application, asserting that the use of the word "will" in section 10(a) in relation to providing continuous or increased employment created a contract. The court held that the language of the statute must ultimately control over the interpretation of the administrative agency in charge of creating the application.

islature for the lack of foresight.¹⁹⁴ The court then moved on to the promissory estoppel claim, and the heart of the opinion. After declaring that the “[a]pplication of the doctrine of promissory estoppel is based on the particular factual circumstances; as an equitable remedy, it is employed to alleviate an unjust result of strict adherence to established legal principles,”¹⁹⁵ the court went on to describe the elements necessary for the enforcement of a promissory estoppel claim under Michigan common law.¹⁹⁶ The doctrine requires (1) a “promise that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promise[e], (2) which in fact produced reliance or forbearance of that nature, (3) in circumstances such that the promise must be enforced if injustice is to be avoided.”¹⁹⁷ Ypsilanti claimed that GM represented that they would provide continuous employment at Willow Run for as long as the municipality provided tax abatements.¹⁹⁸ Ypsilanti also claimed that this representation, coupled with Mr. Williams’ statement at the public hearing,¹⁹⁹ qualified as a promise deserving enforcement under the equitable doctrine.²⁰⁰

Id. at *10.

194.

This Court's conclusion that the legislature did not, when it enacted Act 198, intend to impose contractual obligations on subsidized industries is not something of which the State should be proud. The relationship of government and industry in this country is necessarily one of conflict, for it is the purpose of government to provide for the common welfare of all and it is the antithetical purpose of an industry to strive solely for the profit of its owners. For example, contrary to the approach of the defendant in this case that “what is good for General Motors is good for the country,” the truth is, as this case demonstrates, that what is good for General Motors may only coincidentally help, and often hurts, many of our people. . . . The tax abatement statutes in this State and others are not the product of a well thought out effort to forge . . . a new partnership [between industry and the government]. This tax subsidy policy results in pitting state against state and municipality against municipality in an inter-governmental bidding war. The local governments of this State are placed in a position where they feel that they have no choice but to give taxpayers’ resources away under a statute which does not mandate that they receive anything in return for those foregone taxes.

Id. at *10 (footnote omitted).

195. *Id.* at *11.

196. The court stated that the elements have been clearly identified in Michigan case law, and cites a number of prior decisions, with *Dumas v. Auto Club Ins. Ass’n*, 425 N.W.2d 480 (Mich. Ct. App. 1988) being the most recent. *Id.*; see *id.* at *11 n.42 (citing the decisions).

197. *Id.* at *11.

198. *Id.* Representations were made through a repeated pattern of inducement for abatements, and the fact that GM had always provided the jobs in the past. *Id.*

199. See *supra* notes 161-64 and accompanying text (discussing the statement of Mr. Williams).

200. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *11.

Regarding the first element, the court provided a legal definition of the word promise, stating, "[t]he fundamental element of [a] promise seems to be an expression of intention by the promisor that his future conduct shall be in accordance with his present expression, irrespective of what his will may be when the time for performance arrives."²⁰¹ The court ruled that the statement made by GM indicating that the granting of an abatement would enable GM to provide continuous employment at the plant was the type of quid pro quo remark that would naturally be associated with a promise.²⁰² Additionally, the court noted that "[i]n the context of the abatement application hearing[,] the statement was also a promise that General Motors 'should reasonably have expected to induce action of a definite and substantial character on the part of' the township."²⁰³ GM was attempting to induce Ypsilanti to cut the property taxes in half on a \$75 million project, and the court relied on the fact that the decision to invest in the Willow Run facility was made and publicized *prior* to the seeking of the abatement.²⁰⁴ "The only logical reason the township would have to give up half of the taxes on the project is that General Motors represented, as it had done in the past, that as long as it made those cars it was going to make them in Willow Run."²⁰⁵

General Motors countered by arguing that if a promise existed, it was conditioned on "favorable market demand," and therefore illusory and unenforceable.²⁰⁶ GM argued that their promise was conditioned on market demand for Caprice automobiles sufficient to keep Willow Run *and* the Arlington, Texas plant running two shifts per

201. *Id.* at *12 (quoting *Mastaw v. Naiukow*, 306 N.W.2d 378, 380 (Mich. Ct. App. 1981)).

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. GM based this claim on the fact that Mr. Williams' statement included the phrase "favorable market demand." *Id.* Mr. Williams testified at trial that he meant to indicate that the Willow Run facility would only be maintained for as long as there was sufficient demand to keep both the Ypsilanti and Arlington, Texas plants open and running two shifts per day. *Id.* The court rejected this argument, indicating that the Arlington plant had never been mentioned during any discussions of the abatement, and that the credibility of such testimony was suspect, coming as it did nearly five years after the fact and in the context of a trial over the transfer to the Arlington facility. *Id.* The court stressed the need for an objective test to determine intent, which disemboweled GM's allegation that they intended Willow Run's continued activity to depend on the level of production at Arlington. *Id.* For an argument that reliance on illusory promises is sufficient to allow enforcement of a promise, see Metzger & Phillips, *Reliance*, *supra* note 59, at 886-902.

day, 235 days per year.²⁰⁷ The court held that the intent of the parties must be determined based on an objective view of the expressed, not unexpressed, words of the speaker.²⁰⁸ Because no mention of the Arlington plant had been made during the public hearing on the tax abatement in question, nor had any mention of Arlington work levels been discussed with township officials, and because the testimony regarding the "proper" interpretation of that phrase came nearly five years after the statement was made, in the context of litigation over the transfer to Arlington, the court was not persuaded that the promise was truly conditional.²⁰⁹ The court then ruled that "General Motors' statement clearly meant that if there was a sufficient market demand to make the Caprice and the station wagons they would be made at Willow Run."²¹⁰ This finding satisfied the first requirement, a promise reasonably expected to induce action, for a promissory estoppel claim to be successful.

The second element in promissory estoppel is the "promise produced 'reliance or forbearance' of a definite and substantial character," which the court found almost without discussion.²¹¹ Noting that the township surrendered over \$2 million in local taxes for the 1988-1992 period alone,²¹² the court felt it was unnecessary to examine any of the other evidence of reliance.²¹³ The final element of a promissory estoppel claim is the requirement that injustice may only be avoided by enforcement of the promise.²¹⁴ The court distinguished prior cases which refused to enjoin plant closures using promissory estoppel because those cases did not involve tax abatements, and also because the shut-downs were justified by economic necessity.²¹⁵ The judge in this case, in deciding how to use his equity

207. *Ypsilanti*, 1993 WL 132385, at *12 (testimony of Harvey Williams).

208. *Id.*

209. *Id.*

210. *Id.* at *13. There was still a demand for the cars at the time of the transfer, GM merely decided to transfer the production of one-third of those cars from Willow Run to Arlington. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.* (discussing *Local 1330, United Steel Workers of Am. v. United States Steel Corp.*, 631 F.2d 1264 (6th Cir. 1980); *Abington v. Dayton Malleable, Inc.*, 561 F. Supp. 1290 (S.D. Ohio 1983)); see *infra* notes 332-57 and accompanying text (providing a detailed comparison of those cases to the *Ypsilanti* facts and decisions). Note that the parties in this case stipulated that economic necessity was not a justification for the closing of the Willow Run facility. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *13.

powers,²¹⁶ “simply f[ound] that the failure to act in this case would result in a terrible injustice and that the doctrine of promissory estoppel should be applied.”²¹⁷

There would be a gross inequity and patent unfairness if General Motors, having lulled the people of the Ypsilanti area into giving up millions of tax dollars which they so desperately need to educate their children and provide basic governmental services, is allowed to simply decide that it will desert 4500 workers and their families because it thinks it can make these same cars a little cheaper somewhere else.²¹⁸

The court then enjoined GM from transferring production from Willow Run to any other facility.²¹⁹ General Motors appealed.

E. The Appellate Court Opinion

The Court of Appeals of Michigan began their opinion in *Charter Township of Ypsilanti v. General Motors Corp.*²²⁰ with a brief restatement of the case, and the trial court’s findings of fact.²²¹ The court then discussed the standard of review for findings of fact in an equity action.²²² The court held that in order to be reviewable, the findings must be clearly erroneous.²²³ Clearly erroneous means that “the appellate court [must be] left with a definite and firm convic-

216. Judge Shelton, commenting on his responsibility to make a determination of the equities in the case, stated as follows:

[T]his court, perhaps unlike the judges [in the other plant closure cases], simply finds that the failure to act in this case would result in a terrible injustice and that the doctrine of promissory estoppel should be applied. Each judge who dons this robe assumes the awesome, and lonely, responsibility to make decisions about justice, and injustice, which will dramatically affect the way people are forced to live their lives. Every such decision must be the judge’s own and it must be made honestly and in good conscience. There would be a gross inequity and patent unfairness if General Motors, having lulled the people of the Ypsilanti area into giving up millions of tax dollars which they so desperately need to educate their children and provide basic governmental services, is allowed to simply decide that it will desert 4500 workers and their families because it thinks it can make these same cars a little cheaper somewhere else. Perhaps another judge in another court would not feel moved by that injustice and would labor to find a legal rationalization to allow such conduct. But in this court it is my responsibility to make that decision. My conscience will not allow this injustice to happen.

Ypsilanti, 1993 WL 132385, at *13.

217. *Id.*

218. *Id.*

219. *Id.* at *14.

220. 506 N.W.2d 556 (Mich. Ct. App. 1993).

221. *Id.* at 557-58.

222. *Id.* at 558-59.

223. *Id.*

tion that a mistake has been made."²²⁴ The court then integrated the elements for a promissory estoppel claim with the standard of review and indicated that what is required is "an actual, clear, and definite promise,"²²⁵ combined with reliance that is "'reasonable only if it is induced by an actual promise.' A determination that there was a promise will be overturned if it is clearly erroneous."²²⁶

The appellate court held that the trial court's finding of a promise was clearly erroneous.²²⁷ This determination was based first on the court's holding that the solicitation of an abatement, combined with assurances of jobs, cannot be evidence of a promise.²²⁸ The fact that the purpose of the tax abatement statute was to induce companies to locate and/or continue production in particular communities was deemed to bolster this decision.²²⁹

Another factor deemed to mitigate against the existence of a promise was that "representations of job creation and retention are a statutory prerequisite."²³⁰ Finally, relying on precedent, the court stated, "the fact that a manufacturer uses hyperbole and puffery in seeking an advantage or concession does not necessarily create a promise."²³¹ The court described statements made in *Marine Transport Lines, Incorporated*,²³² *Abbingdon v. Dayton Malleable, Incorporated*,²³³ and *Local 1330 v. U.S. Steel*,²³⁴ and then turned to examine the statements made in the case at bar.²³⁵

The court ruled that the statements relied on by the plaintiffs

224. *Id.* at 559 (citing, *Beason v. Beason*, 460 N.W.2d 207, 212-13 (Mich. 1990)).

225. *Id.*

226. *Id.* (citing *State Bank of Standish v. Curry*, 500 N.W.2d 104, 107 (Mich. 1993) (citations omitted)). Note that the *Curry* decision was handed down by the Michigan Supreme Court *after* the circuit court decided the *Ypsilanti* case at trial, but in sufficient time for the appellate court to rely on it.

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.* The court did not elaborate on this point, other than to cite statutory language supporting the proposition that assurances of job creation or retention are required. *Id.* (citing MICH. COMP. LAWS § 207.559(2)(e) (1975)).

231. *Id.* (citing *Local 1330, United Steel Workers v. United States Steel Corp.*, 631 F.2d 1264 (6th Cir. 1980); *Marine Transport Lines, Inc. v. International Org. of Masters, Mates, and Pilots*, 636 F. Supp. 384 (S.D.N.Y. 1986); *Abbingdon v. Dayton Malleable, Inc.*, 561 F. Supp. 1290 (S.D. Ohio 1983), *aff'd*, 738 F.2d 438 (6th Cir. 1984)).

232. *See supra* notes 115-21 and accompanying text (discussing the decision in *Marine Transport*).

233. *See supra* notes 100-14 and accompanying text (discussing *Abbingdon*).

234. *See supra* notes 86-99 and accompanying text (discussing *Local 1330*).

235. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556, 559-60 (Mich. Ct. App. 1993).

were merely GM's expressions of their hopes or expectations of continued employment at Willow Run, rather than promises.²³⁶ The course of conduct evidence was minimized by indicating that it only showed efforts to take advantage of the statutory opportunity presented by P.A. 198.²³⁷ The acts relied on by the trial court as evidence of a promise were described as only those "one would naturally expect a company to do in order to introduce and promote an abatement proposal to a municipality."²³⁸ The court also noted that much of the evidence presented by the plaintiffs related to abatements sought for Hydra-Matic, rather than Willow Run.²³⁹

The appellate court asserted that GM should be given the abatement because "[b]ased on the past history . . . , they've always done what they said they would do and they've kept the jobs there and they kept the plant operating."²⁴⁰ The court determined that a statement made by the township assessor could not be used as evidence of a promise, because it was the assessor's evaluation, rather than the defendant's promise.²⁴¹ The court also dismissed the State Tax Commission resolution which predicated approval of the abatement on retained or increased employment in the county as the commission's expectation, not the defendant's promise.²⁴² Mr. Hughes, who provided information regarding the effect of loss of market share by GM on national employment levels at the public hearing, made a statement regarding GM's consistent pattern of employment at Willow Run.²⁴³ This was found to have been made by way of history, and not as a statement of future intent.²⁴⁴ Finally, the court analogized the statements made by General Motors representative Harvey Williams to the "puffery" which was found not to constitute a promise by a federal court in *Marine Transport Lines, Incorporated*.²⁴⁵ The court held that no actual, clear, and definite promise

236. *Id.* at 560.

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *See supra* note 169 and accompanying text (identifying the township assessor as Wesley Prater and discussing his comments at the public hearing).

242. *Ypsilanti*, 506 N.W.2d at 560.

243. "Since the '81, '82 time-frame you can see that we've been basically maintaining about five thousand employees each year in a very consistent pattern." *Id.*

244. *Id.*

245. 636 F. Supp. 384 (S.D.N.Y. 1986); *see supra* notes 115-21 and accompanying text (discussing *Marine Transport*).

had been made, and that even if one could be found, the reliance upon it was not reasonable.²⁴⁶

Citing statements made by some of the many members of the general public who attended the hearing and protested the lack of commitment by General Motors,²⁴⁷ the court concluded that there was a general understanding that GM was *not* promising anything in return for the abatement.²⁴⁸ Because no clarification or response to these concerns was requested from defendant's representatives, and the Board proceeded to approve the application,²⁴⁹ the court held "the resolution contained no suggestion that approval was conditioned on a commitment to operate the plant for any particular period."²⁵⁰ The Court of Appeals of Michigan then held that no promise had been made, reversed the decision of the trial court, and allowed General Motors to transfer production away from Willow Run and out of Ypsilanti for good.²⁵¹

III. ANALYSIS

A. Use of Tax Abatements

The use of tax abatements as an economic incentive to draw in and retain businesses and industries for a particular area is an ineffective governmental tool.²⁵² This can be attributed in part to the minor role tax abatements play in a company's location decision.²⁵³ The importance of abatements is limited because the other costs of doing business greatly outweigh local and state tax burdens.²⁵⁴ Ad-

246. *Ypsilanti*, 506 N.W.2d at 561.

247. Dillard Craiger, chairman of the Washtenaw County Board of Commissioners, opposed granting the abatement "unless a commitment was made by General Motors to remain operating." *Id.* Craiger also complained that GM had not made any firm commitment. *Id.* Mr. Smith, a member of the audience and an 18-year employee of GM, commented that he would like to see the company stay until he could retire, "but they are not promising anything." *Id.* at 562. Finally, Mr. Debs, president of the local union, said, "nobody can tell us what the sales are going to be" and "no plant can stay open" if sales drop." *Id.*

248. *Id.* at 562; see *supra* note 247 (detailing the statements made by the public on which the appellate court relied).

249. *Ypsilanti*, 506 N.W.2d at 561.

250. *Id.* at 562.

251. *Id.*

252. See *supra* notes 39-54 and accompanying text (discussing the limited role tax abatements play in corporate location decisions).

253. See *supra* notes 39-54 and accompanying text.

254. For the average business, taxes are less than 4% of the value added. In comparison, energy costs constitute 8%, and labor costs can rise as high as 60% of the value added. NORTHEAST MIDWEST INSTITUTE, THE GUIDE TO STATE AND FEDERAL RESOURCES FOR ECONOMIC DEVELOP-

ditionally, state and local taxes are deductible from federal taxes, further reducing the net worth of an abatement and discounting its value in location decisions.²⁵⁵

The influence of non-tax factors was clearly exemplified during recent competition between thirty-seven states for GM's proposed Saturn production plant.²⁵⁶ Over 1000 sites throughout the country battled each other to show GM that they were the best location for the nearly \$6 billion investment and 6000 new jobs.²⁵⁷ The State of Michigan stated their "intent to exceed *any* offer"²⁵⁸ made by other communities, yet it was eliminated from consideration by GM because of the high utility and workers compensation costs in the state.²⁵⁹ In the end, "[t]ransportation considerations emerged as the single largest factor in the decision-making process."²⁶⁰ The focus on non-tax factors in making a relocation decision in *Ypsilanti* was nearly analogous.

In attempting to choose between Willow Run and Arlington, GM never considered the granting of the tax abatements by Ypsilanti an important factor. For example, in a twelve-page company confidential plant comparison, General Motors never once referred to abatements or tax considerations as a relevant factor in deciding between Ypsilanti and Arlington.²⁶¹ The closest possible allusion was a comment that Willow Run provided a lower unit cost, which presumably factored in the generous tax break provided to the company.²⁶² Despite the lower unit cost, and other clear advantages to continued production of Willow Run, GM chose the Arlington facility. The influence of non-tax factors obviously greatly outweighed any impact the abatement could have had on the decision-making process. Because tax abatements are generally seen by companies as a non-factor in location decisions, they are an ineffective tool for municipi-

MENT 233-34 (C. Bartsch ed., 1988).

255. Richard D. Pomp, *The Role of State Tax Incentives in Attracting and Retaining Business: A View From New York*, 29 TAX NOTES 521, 523 (1985).

256. See Kolesar, *supra* note 18, at 289-91 (providing a case study of the Saturn experience to illustrate the role of economic incentives in location decisions).

257. *Id.* at 289.

258. *Id.* at 290.

259. *Id.* (comparing to rival bidders Kentucky and Tennessee). In the final analysis, transportation concerns emerged as the most important factor in the decision-making process. *Id.* at 290-91.

260. *Id.*

261. Application of Charter Township of Ypsilanti for Leave to Appeal and for Expedited Consideration Thereof (Appendix E, B/D Plant Platform Consolidation), *Ypsilanti v. General Motors Co.*, 506 N.W.2d 556 (Mich. Ct. App. 1993) (No.161245).

262. *Id.* at 11.

palties seeking to increase or retain industry and business in their communities. Unless companies are legally obligated to remain in the granting community in return for an abatement, tax abatements will continue to play an insignificant role in the allocation of productive resources.

Compounding the problems associated with tax abatements, governing bodies caught up in the abatement process can be dragged down in the "race to the bottom."²⁶³ When companies can get different localities to engage in a "bidding war" to offer the greatest possible incentives, the results can be disastrous. Because state and local governments are subject to extreme competitive pressures in the struggle to attract and retain capital, they will often feel obligated to comply with company coercion aimed at increasing the incentives.²⁶⁴ In a striking example of how economic pressures can force concessions, union members in Arlington and Ypsilanti turned on one another in an attempt to persuade GM that theirs was the superior plant. By offering greater and greater compromises, the local unions hoped to sway GM's decision concerning the location of production of Caprice automobiles.²⁶⁵

The negative impact of "the race to the bottom" is produced in part by loss of revenue for the community. Less tax dollars are

263. See *supra* notes 45-54 and accompanying text (describing the harmful consequences of the race to the bottom).

264. The political pressure on legislators to maintain the appearance of actively recruiting business for their constituency will sometimes lead to the offering of economic incentives regardless of long-term repercussions. However, communities do not always bow to the pressure. Lansing, Michigan denied GM a requested tax break, despite suggestions that the break was needed if GM was to expand its operations. Kolesar, *supra* note 18, at 308. GM stayed in Lansing without the requested relief. *Id.*

265.

General Motors Corp. in effect pitted unionized workers against one another when it said it would close down either a plant in Arlington, Texas, or one in Ypsilanti, Mich[igan]. The 3,200 Arlington workers put cooperation with GM ahead of UAW fellowship, voting to allow a three-shift schedule to build cars round the clock without overtime pay, and approving other work-rule changes. Workers in Ypsilanti didn't offer GM much, and their plant is now set to close next year.

Dana Milbank, *On the Ropes: Unions' Woes Suggest How the Labor Force in U.S. is Shifting*, WALL ST. J., May 5, 1992, at A1, A14.

"We feel betrayed by our Arlington UAW brothers and sisters," said a Willow Run union member referring to the battle between the plants to remain open by offering concessions to GM. David Morrow, *Ypsi. Texas Town in GM Survival Duel; Jobs \$100 Million Plant Hinge on Outcome*, DET. FREE PRESS, Dec. 21, 1991, at A1. For an argument that this type of conduct is inappropriate, and that the National Labor Relations Act was designed to and should protect worker solidarity, see David Abraham, *Individual Autonomy and Collective Empowerment in Labor Law: Union Membership Resignations and Strikebreaking in the New Economy*, 63 N.Y.U. L. REV. 1268, 1273 (1988).

taken in, while operating costs for governmental services increase.²⁶⁶ The loss in revenue and increased strain on service providers can result in a corresponding decrease in the quality and availability of governmental services, as well as a degradation of infrastructure.²⁶⁷ Not only can this diminish the quality of life for the community's residents, it can lead to the loss of the very business who received the abatement. If the abatement grantee is not legally bound to the community, it may decide that the decrease in quality or quantity of services or decaying infrastructure outweighs the benefit of the abatement, and that relocation would be in their best interest.²⁶⁸ The community would then be left to deal with the side effects of decreased revenue, without the production facility they made the sacrifices for in the first place.

As stated earlier, tax abatements are not a major influence in a company's location decision.²⁶⁹ Nor will a community necessarily benefit by granting abatements in order to draw in business or industry. This dichotomy, combined with a statute that does not require a business to provide assurances of continued production or employment, places communities like Ypsilanti in a difficult predicament. The community feels obligated to offer the incentives to draw in or maintain businesses, but fears the repercussions of a hasty departure. This is especially true in a case like *Ypsilanti*, when the community and business have a long-standing relationship where the use of abatements has been mutually beneficial. Still, they face the possibility of a major catastrophe should the business withdraw. If the statute granting the community the power to offer abatements is not sufficient to bind the company to uphold representations made in order to get the abatement, the law must devise a method of enforcement. Promissory estoppel has the ability to rise to the task.

B. Promissory Estoppel and Plant Closures

Promissory estoppel is an evolving and expanding doctrine, which allows for application in many settings.²⁷⁰ It is used as a method of

266. See *supra* note 48-54 and accompanying text (discussing the "costs" of tax abatements).

267. Kolesar, *supra* note 18, at 295-96.

268. See *supra* notes 49-54 and accompanying text.

269. See *supra* notes 29-31 accompanying text (discussing the myriad factors that outweigh the value of a tax abatement in many company relocation decisions).

270. See *supra* notes 55-84 and accompanying text (discussing the expansion of promissory estoppel and its uses).

imposing liability and expectation damages in cases where the promisor apparently intended to be legally bound,²⁷¹ though enforcement would be doubtful on traditional contract grounds owing to the absence of a clear bargain.²⁷² “[P]romissory estoppel seems to reflect a judgment that formal requirements too often lead to results at odds with the reasonable intentions and expectations of contracting parties.”²⁷³ The goal of the law should be to protect the ability of individuals to trust in promises where trust is essential, and promissory estoppel was developed to accomplish that end.²⁷⁴ The application of the doctrine of promissory estoppel to prevent plant closures in situations where tax abatements were granted in reliance on representations made by the grantee is wholly appropriate. Trust *is essential* when a community is preparing to forebear collection of a substantial amount of tax revenue in the hopes of increasing their business/industrial base. Accordingly, promissory estoppel is an ideal solution for problems arising in that context. Promissory estoppel may rightfully be invoked, provided its elements are met by the plaintiff, in order to enjoin the recipient of a tax abatement from deserting the granting community before the abatement period has expired.

C. Application of Promissory Estoppel in the *Ypsilanti* case

1. The Promise

In determining whether promissory estoppel could be used to pre-

271. “[C]ourts award and uphold expectation damages [on promissory estoppel claims] when they find that a promise exists, when the promisor gained an economic advantage from the promisee, and when the parties’ relationship is ‘ongoing rather than in the context of a discrete transaction.’” Brief of Amicus Curiae at 21, *Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556 (Mich. Ct. App. 1993) (No. 161245) (quoting Farber & Matheson, *supra* note 57, at 925). “[A]ny promise made in furtherance of an economic activity is enforceable.” Farber & Matheson, *supra* note 57, at 905. Where the elements of reasonable reliance, economic benefit to the promisor, inequality of status and knowledge, and differing levels of commitment to the underlying transaction are present, an award of expectation damages is appropriate under promissory estoppel. Feinman, *Promissory Estoppel*, *supra* note 57, at 314.

272. Mary E. Becker, *Promissory Estoppel Damages*, 16 HOFSTRA L. REV. 131, 140-42 (1987). The article posits that expectation damages are appropriate despite the lack of a clear indication of a bargained-for promise in three situations: “when consideration is clearly bargained-for[,] to protect the promisee’s restitution and reliance interests, and [where] judicial preferences may favor full enforcement.” *Id.* at 141.

273. Randy E. Barnett & Mary E. Becker, *Beyond Reliance: Promissory Estoppel, Contract Formalities, and Misrepresentations*, 15 HOFSTRA L. REV. 443, 449 (1987).

274. *State Bank of Standish v. Curry*, 500 N.W.2d 104, 107 (Mich. 1993) (referring to Farber & Matheson, *supra* note 57, at 928, 942).

vent the closure of Willow Run, the court of appeals erred by disregarding the Michigan Supreme Court's instructions regarding the proper application of the doctrine in *State Bank of Standish v. Curry*.²⁷⁵ *Curry* does hold, as the appeals court indicated, that "[p]romissory estoppel requires an actual, clear, and definite promise. . . . [and that] 'reliance is reasonable only if it is induced by an actual promise.'" ²⁷⁶ The error made by the court is the failure to follow *Curry's* instructions on how to determine the existence of such a promise. Rather than base a decision solely on the statement "[w]e'll support you," made from a bank to a loan recipient,²⁷⁷ the Michigan Supreme Court also looked to the long history of relations between the parties.

Year after year, Mr. Curry would go to the bank with his financial statements to discuss the upcoming crop and the resulting necessary loan.²⁷⁸ The bank would fill out the paperwork and call the Currys later in the year to come to the bank and sign the promissory note for their loan.²⁷⁹ At the initial meeting between the parties during the year in question, the conversation focused on the hard economic times, and the possibility that the Currys would get out of the dairy business.²⁸⁰ The bank indicated that the Currys were doing a good job fulfilling the bank's expectations, and that the bank would continue to support them in the business if they decided to continue.²⁸¹ This combination of course of conduct and a vague statement of intent was found to constitute a promise sufficient to be reasonably relied on by the Currys.²⁸² The situation between Ypsilanti and General Motors was nearly identical.

In *Ypsilanti*,²⁸³ General Motors would draw up its financial statements and proposals for rehabilitation, and then file an application for an abatement with the Township.²⁸⁴ The Board would recommend approval, and General Motors would be granted an abatement

275. 500 N.W.2d 104 (Mich. 1993).

276. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556, 559 (Mich. Ct. App. 1993) (citation omitted) (citing *Curry*, 500 N.W.2d at 107).

277. *Curry*, 500 N.W.2d at 106.

278. *Id.* at 105.

279. *Id.*

280. *See supra* note 128 (discussing the buy-out plan available to the Curry's).

281. *Curry*, 500 N.W.2d at 106.

282. *Id.* at 110.

283. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

284. *Id.* at 558.

for the maximum allowable period.²⁸⁵ Thereafter, General Motors would provide continuous or increased employment for the people of Ypsilanti.²⁸⁶ During the negotiations for the abatement in question, a General Motors representative indicated that the corporation intended to continue the trend and maintain continuous production and employment at the Willow Run plant.²⁸⁷ Just as the Currys left the bank satisfied that once again their future was secure, so did the Township of Ypsilanti adjourn the public hearing.

In both cases, a long and continuous relationship carried on just as it always had, until a parsimonious defendant broke the agreement upon which it had led the aggrieved party to rely. Based on an objective standard used to "determine the existence and scope of a promise, we look to the words and actions of the transaction as well as the nature of the relationship between the parties and the circumstances surrounding their actions."²⁸⁸ In *Ypsilanti*, as in *Curry*, these factors point directly towards the existence of an actual, clear, and definite promise.

Ypsilanti saw their relationship with General Motors as symbiotic, i.e., mutually beneficial, whereas General Motor's conduct leads to the conclusion that they were acting under a different assumption. It is the court's job to determine if the facts indicate that General Motors lured Ypsilanti into a false, yet reasonable, sense of security before revealing that assumption. The trial court properly considered the long-term nature of the relationship between the par-

285. See *supra* notes 161-90 and accompanying text (discussing pattern of behavior subsequent to application of P.A. 198 between the parties).

286. See *supra* notes 160-89.

287. See *supra* notes 178-182 (discussing the statements made by Mr. Williams and Mr. Hughes). Additionally, on at least one occasion, General Motors explicitly stated their "dedicat[ion] to retain and/or increase jobs at Ypsilanti and [to] maintain this dedication in the future. [They] intend to keep this facility a viable operation for the community and General Motors." *Charter Township of Ypsilanti v. General Motors Corp.*, No. 92-43075-CK, 1993 WL 132385, at *5 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993). The court of appeals made much of the fact that some of the course of conduct evidence, as well as the letter quoted above, referred to the Hydra-Matic facility, and not specifically to Willow Run. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556, 560 (Mich. Ct. App. 1993). This ignores the fact that the parties followed the same series of events, regardless of which facility sought the abatement. It also fails to consider that both plants were inside of the same Industrial Rehabilitation Zone, and that General Motors dealt with the same people, from the same community, in seeking abatements for either plant. *Ypsilanti*, 1993 WL 132385, at *4. The letter referred to specifically mentions the intention to retain/increase jobs for Ypsilanti, and not a specific plant. It is nearly impossible to attempt to separate the two, as throughout the relationship what happened for one plant happened for the other.

288. *State Bank of Standish v. Curry*, 500 N.W.2d 104, 109 (Mich. 1993).

ties, the fact that General Motor's had always followed through with their representations in the past, and the fact that General Motors did not deviate substantially from its established pattern of behavior in this instance as indicating that a promise had been made.²⁸⁹ Moreover, the conduct occurred during a relationship based on trust in an economic setting, and is thus worthy of protection under the law.²⁹⁰ It was the trial court's duty, as finder of fact, to make those determinations.

2. *Abuses of Discretion by the Court of Appeals*

In reversing the opinion of the trial court, the reviewing court abused its discretion by substituting its own impression of the course of conduct evidence for that found by the trier of fact to support the existence of a promise. The appellate court held that the actions taken by General Motors in soliciting the many abatements they received over the years "did not constitute *assurances* of continued employment,"²⁹¹ which would have bound the corporation to providing employment in Ypsilanti. Earlier in the opinion, however, the court stated, while referring to the same course of conduct evidence, that "the mere fact that a corporation solicits a tax abatement . . . with *assurances* of jobs cannot be evidence of a promise."²⁹² The court of appeals characterized the same evidence as both an assurance and not an assurance, which could either be sufficient or insufficient to support a claim. This shows that the evidence should be considered ambiguous and open to interpretation. Because there are two permissible views of this evidence (indicated by the reviewing court's adoption of both of them), *Beason v. Beason*²⁹³ requires acceptance of the trial court's view. "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous."²⁹⁴ Accordingly, the appeals court abused its discretion by overruling the trial court and holding that the course of conduct evidence did not support the finding of a promise.

289. Charter Township of Ypsilanti v. General Motors Corp., No. 92-43075-CK, 1993 WL 132385, at *11-14 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

290. See Farber & Matheson, *supra* note 57, at 928-29 (discussing courts usage of promissory estoppel in situations involving relationships based on trust).

291. Charter Township of Ypsilanti v. General Motors Corp., 506 N.W.2d 556, 560 (Mich. Ct. App. 1993) (emphasis added).

292. *Id.* at 559 (emphasis added).

293. 460 N.W.2d 207 (Mich. 1990).

294. *Id.* at 212-13.

The appellate court also erred in its application of the clearly erroneous standard by overruling other factual determinations made by the trial court. Relying on *Beason*, the court of appeals said that findings are clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake had been made.²⁹⁵ Although *Beason* does support this proposition,²⁹⁶ it goes on to indicate that a trial court's determination is presumed to be correct²⁹⁷ and a reviewing court should not substitute its own judgment if the initial determination is *plausible* in light of the record viewed in its entirety.²⁹⁸ Additionally, a reviewing court should give increased weight to factual determinations made by the court which heard the testimony and saw the witnesses.²⁹⁹ In this case, a key factual determination was the nature of Mr. Williams' statement at the public hearing,³⁰⁰ and whether that statement was promissory in nature.

The nature of the statement, for the appeals court, turned on the phrase "subject to favorable market demand."³⁰¹ It was deemed to qualify the antecedent remarks, which indicated that the abatement would allow continued production and employment at Willow Run in such a way as to make the statement insufficient to constitute a promise.³⁰² In making this decision, the court of appeals blatantly disregarded the trial court's determination³⁰³ that General Motor's characterization and post hoc definition of that phrase was unacceptable, unsupported by the evidence, and not credible.³⁰⁴ The trial court heard the evidence regarding this assertion and made a credi-

295. *Ypsilanti*, 506 N.W.2d at 558-59.

296. *Beason*, 460 N.W.2d at 212.

297. *Id.* at 213.

298. "[This standard] does not authorize a reviewing court to substitute its judgment for that of the trial court; if the trial court's view of the evidence is plausible, the reviewing court may not reverse." *Id.*

299. *Id.* at 212.

300. See *supra* notes 178-82 (quoting and discussing the statement made by Mr. Williams).

301. See *supra* note 245-46 and accompanying text (stating the court of appeals position regarding the statement by Mr. Williams).

302. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556, 560-61 (Mich. Ct. App. 1993); see *supra* notes 245-46 and accompanying text (discussing the statement of Mr. Williams as analyzed by the appellate court).

303. "Although the parties greatly dispute what the speaker meant by 'favorable market demand' . . . , the fact is that the statement qualified defendant's expectation" *Ypsilanti*, 506 N.W.2d at 561. Here, there is no consideration of alternatives, no balancing of possible interpretations, no weighing of evidence, only a flat statement of what the appeals court thinks the statement means. This appears to be exactly the type of substitution of judgment the *Beason* court sought to avoid. *Beason v. Beason*, 460 N.W.2d 207, 213 (Mich. 1990).

304. *Charter Township of Ypsilanti v. General Motors Corp.*, No. 92-43075-CK, 1993 WL 132385, at *19 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

bility determination. General Motors (through Mr. Williams) asserted that the phrase was intended to mean that there was sufficient demand to keep Willow Run *and* Arlington open for two shifts per day.³⁰⁵ The trial court found that when looked at objectively, the intent alleged by GM was suspect and the testimony not credible. That decision was made in light of the fact that Arlington had not been mentioned at the time the statement was originally made, and the clarification of the "true" intent was made in the context of litigation regarding the transfer of production to Arlington.³⁰⁶ The intent must be judged based on the expressed, not unexpressed, words of the parties, and on an objective view of the statement.³⁰⁷ The credibility determination by the trial court should not be overturned so easily.

Beason held that if evidence could be marshalled in support of a determination contrary to that of the trial court, or if the interpretation was clearly unreasonable, a credibility decision could be overruled.³⁰⁸ Such was not the case here. There was no evidence to support Mr. Williams' contention, made nearly five years after the original statement, that Willow Run's production was in any way contingent on work levels at Arlington.³⁰⁹ The two plants had not been mentioned in the same context to anyone who represented Ypsilanti,³¹⁰ and no evidence was produced at trial which tied the production levels at the facilities together in any way. Additionally, it would not have been unreasonable for Ypsilanti to interpret "favorable market demand" to mean that as long as Caprice automobiles were being made, they would be made in Ypsilanti.³¹¹ The reviewing court should not be permitted to merely substitute its judgment as to the credibility of a statement for that of a lower court which is in a better position to decide the matter.³¹² Mr. Williams' statement should be construed, as the trial court found, to be

305. *Id.*

306. *See supra* notes 208-10 and accompanying text (discussing the trial court's determination of intent).

307. *See supra* notes 208-10 and accompanying text.

308. *Beason*, 460 N.W.2d at 213.

309. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *12.

310. *Id.*

311. *Id.*

312. "[I]f the trial court's 'account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.'" *Beason*, 460 N.W.2d at 214 (Levin, J., concurring) (citing *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985)).

a legally sufficient promise to produce Caprice automobiles at Willow Run for as long as there was a demand for those cars.³¹³

2. Reasonable Reliance

The appellate court held that “[e]ven if the finding of a promise could be sustained, reliance on the promise would not have been reasonable.”³¹⁴ As support for this proposition, the court cited several statements made during the public hearing on the abatement regarding GM’s lack of commitment to Ypsilanti.³¹⁵ The important connection the court failed to make is that *none* of the people making the statements represented the Township of Ypsilanti. The majority of the statements were made by members of the audience, none of whom were exposed to the course of conduct detailed herein.³¹⁶ Nor were they privy to the details of the “education sessions” conducted by General Motors to persuade the Township Board to grant the abatement. As the full and true makeup of General Motors’ promise could not be known without considering all the evidence, and because none of the people were authorized to represent the Township or the defendant, these statements cannot represent the understanding of the parties to this suit. The court of appeals obviously understood the importance of considering the *parties’* interpretation of the agreement, as they summarily dismissed as irrelevant the State Tax Commission’s assessment that the abatement would result in increased job opportunities. This statement was dismissed because it was the Commission’s position, not the defendant’s promise.³¹⁷ The Ypsilanti township assessor said that GM should be given the abatement because their prior conduct indicated that they would keep the plant operational.³¹⁸ Despite his position, the assessor’s remarks were given no credence by the appellate court. The court held that the statement was his position, and not the defendant’s promise. Accordingly, relying on the opinion of uninformed third parties as to the proper perception of the agreement would be truly unreasonable. Yet, that is exactly what the appellate

313. *Ypsilanti*, No. 92-43075-CK, 1993 WL 132385, at *13.

314. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556, 561 (Mich. Ct. App. 1993).

315. *See supra* note 247 (reciting statements made by Craiger, Smith, and Debs).

316. *See supra* notes 163-86 and accompanying text (detailing the course of conduct).

317. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556, 560 (Mich. Ct. App. 1993) (negating the use of two separate Tax Commission statements).

318. *Id.*

court did in overruling the finding for the plaintiffs.

The question to be resolved is whether General Motors could "reasonably have expected to induce action of a definite and substantial character . . . which in fact produced reliance or forbearance of that nature."³¹⁹ The trial court found that General Motors must have expected to induce action of a definite and substantial character by its promise of employment because Ypsilanti had no other reason to grant the abatement,³²⁰ a waiver of one-half of the otherwise collectible property tax on GM's property.³²¹ "[T]he decision to make this investment in Willow Run was made before General Motors pursued or even investigated the possibility of an Act 198 tax abatement General Motors was going to invest in Willow Run regardless of the township's reaction to the tax abatement application and the township knew it."³²² Because the investment decision already had been made and was widely reported in the local news media,³²³ the township did not need to grant the abatement to get the new investment. The only other incentive offered in exchange for the P.A. 198 abatement was the creation or retention of employment.³²⁴ General Motors must have expected the previous course of conduct, whereby abatements were exchanged for jobs, to induce the abatement here; otherwise, there would have been no reason for Ypsilanti to grant it. This shows a reasonable expectation by the corporation to induce the action on the part of the community.

Another indication that General Motors should reasonably have expected to induce action was that the State Tax Commission's resolution based approval of the abatement on the "concern for economic development in Washtenaw County which results in increased job opportunities for unemployed and underemployed residents of our County."³²⁵ This shows that one arm of the government was definitely relying on the promise of employment. It also should have indicated to GM that other branches, Ypsilanti in particular, were

319. *Nygaard v. Nygaard*, 401 N.W.2d 323, 327 (Mich. Ct. App. 1986).

320. *Charter Township of Ypsilanti v. General Motors Corp.*, No. 92-43075-CK, 1993 WL 132385, at *12-13 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

321. Waiving one half of the property tax on a \$75 million dollar project is obviously an action of a definite and substantial character. The trial court pointed out that the money was needed for providing education to local children and bettering municipal services. *Id.* at *13.

322. *Id.* at *6 (footnote omitted).

323. *Id.*

324. *Id.*

325. *Id.*

likely to do the same, particularly due to the extensive history between the parties. The Tax Commission's position can be distinguished from the uninformed third party opinions relied on by the appellate court because of the intimate role played by the commission in the P.A. 198 abatement process.³²⁶ In order to receive an abatement, GM must have approval at the second step in the process from the Tax Commission,³²⁷ making the commission's understanding of the terms of an agreement considerably more likely to be fully informed. Evidence that a party essential to the granting of an abatement relied on GM's promise must be seen as persuasive. Because the reliance by Ypsilanti was reasonable, and induced by GM's promise, the court of appeals erred in reversing the trial court's decision for the plaintiffs.

3. *Economic Necessity*

The court of appeals also erred in allowing General Motors to assert that the shutdown was necessary because of record losses and a decreased demand for the product produced at Willow Run.³²⁸ In this case, "General Motors has stipulated, as it must, that economic necessity is not a defense."³²⁹ Accordingly, the appeals court should not have allowed any argument by GM in favor of closing Willow Run based on an economic motivation. Nor should the court have based their decision on such an argument. Appellate "review is limited to issues actually decided by the trial court,"³³⁰ and as such, the use of an economic argument which was not heard below leads to a further weakening of the justification for reversal. The inappropriateness of this argument³³¹ becomes even more apparent when ex-

326. See *supra* notes 247-48 and accompanying text (discussing the appellate court reliance on third party statements).

327. See MICH. COMP. LAWS § 207.559 (1975) (citing prerequisites).

328. Charter Township of Ypsilanti v. General Motors Corp., 506 N.W.2d 556, 558 (Mich. Ct. App. 1993).

329. Charter Township of Ypsilanti v. General Motors Corp., No. 92-43075-CK, 1993 WL 132385, at *13 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

330. Bay County Executive v. Bay County Bd. of Comm'rs, 443 N.W.2d 168, 173 (Mich. Ct. App. 1989).

331. It seems that GM's use of an economic necessity argument is specious on other grounds as well. Rather than being forced by economic concerns to choose between Willow Run and Arlington, it appears GM was faced with the decision because that is the only option it chose to give itself. The false dichotomy was created despite the fact that Willow Run had a reputation as an "excellent plant" with an "outstanding" work record, and had consistently stayed within its budget while other plants, which could easily have been considered for closure, did not. GM also ignored its own bid policy, whereby each plant competes for the opportunity to produce various

aming the appeals court's misguided reliance on precedents which are easily distinguished because of their *proper* reliance on the economic necessity defense and their discernably different fact patterns.

*D. Comparison to Promissory Estoppel and Plant Closure
Precedents*

1. Local 1330, United Steel Workers of America v. United States Steel Corp.

In *Local 1330, United Steel Workers of America v. United States Steel Corp.*,³³² a federal court of appeals held that promissory estoppel could not be used to enjoin a plant closure.³³³ However, the situation in Youngstown, Ohio, where the facilities were located, was a far cry from the one in Ypsilanti. In *Youngstown*, the promise to keep the plant open, relied on by the plaintiffs, was made *expressly conditional* on increased profitability of the plant.³³⁴ In effect, the statements made by U.S. Steel were the proverbial carrot being dangled in front of the mule to induce him to work just a little harder.³³⁵ U.S. Steel said they would keep the plant open if the employees made sufficient sacrifices, combined with management's efforts, to put the Youngstown facilities "in the black."³³⁶

The court allowed an economic necessity type defense because the promise to keep the plant open hinged on profitability.³³⁷ Accordingly, a key determination for the court was whether or not the steel foundries were in fact profitable. Without proving that the plant was profitable,³³⁸ the plaintiffs could not rely on promissory estoppel because there was no promise on which to base their reasonable reli-

models of automobile, when it spent millions of dollars to give Willow Run the flexibility to produce front or rear wheel drive models. Brief in Support of Motion For Leave to Appear Amicus Curiae in Support of Plaintiff-Appellants' Application for Leave to Appeal and Motion for Stay at 38-41, *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556 (Mich. Ct. App. 1993) (No. 161245).

332. 631 F.2d 1264 (6th Cir. 1980).

333. *Id.* at 1279.

334. *See supra* notes 86-99 (discussing *Local 1330*).

335. In *U.S. Steel*, the court characterized the "promises" as "a major campaign [designed] to enlist employee participation in an all-out effort to make [the plant] profitable in order to prevent [its] being closed." *U.S. Steel*, 631 F.2d at 1277.

336. *Id.* at 1270-72.

337. *Id.*

338. The plaintiffs could not meet this burden owing to their unreasonable definition of profitability. *Id.*

ance.³³⁹ The court found the plaintiffs' definition of profitability economically infeasible,³⁴⁰ and thus, no promise existed that was sufficient to justify the application of promissory estoppel.³⁴¹

In the Willow Run scenario, even if General Motors' promise could be analogized to U.S. Steel's statements (because it was supposedly qualified by the infamous "subject to favorable market demand" statement)³⁴² there was no reasonable basis to assume that determination of the demand necessary to keep Willow Run open turned on the production status of the Arlington facility. Whereas profitability can be defined in the context of standard corporate accounting,³⁴³ no such convention exists to define "favorable" market demand. There was no reason for Willow Run to concern itself with Arlington's productivity. General Motors had never mentioned *any* connection between the plants,³⁴⁴ let alone one as significant as the use of Arlington as a measuring stick for the continued operation of Willow Run. It would be wholly unreasonable for General Motors to assert that Ypsilanti could not rely on the promise of continued employment because of decreasing market demand affecting the Arlington plant. Market demand in the context used by GM could and should reasonably be construed to mean that so long as there was a demand for Caprices to be made, they would be made in Ypsilanti.³⁴⁵

The facts and circumstances in Ypsilanti and Youngstown were sufficiently different to justify differing results in each case. Where U.S. Steel had to close its plant or face continuing heavy losses,³⁴⁶ General Motors explicitly agreed during trial that economic necessity was not a defense to its closing of Willow Run because Willow Run was operating profitably at the time of the shut-down.³⁴⁷ Where the plaintiffs in Youngstown were unreasonable in relying on

339. In addition to the unreasonable definition of profitability, the trial court held that the "hotline" messages should have indicated to the plaintiffs that a shutdown was imminent. *United Steel Workers of Am., Local No. 1330 v. United States Steel Corp.*, 492 F. Supp. 1, 6 (N.D. Ohio 1980).

340. *Id.* at 6-7 (discussing the reasonableness of the competing definitions of profitability).

341. *Local 1330, United Steel Workers of Am. v. United States Steel Corp.*, 631 F.2d 1264, 1279 (6th Cir. 1980).

342. *See supra* note 206 and accompanying text.

343. *U.S. Steel*, 631 F.2d at 1277-79.

344. *Charter Township of Ypsilanti v. General Motors Corp.*, No. 92-43075-CK, 1993 WL 132385, at *12 (Mich. Cir. Ct. Feb. 9, 1993), *rev'd*, 506 N.W.2d 556 (Mich. Ct. App. 1993).

345. *Id.*

346. *See supra* notes 86-99 and accompanying text.

347. *See supra* note 215 and accompanying text.

the "promise" because of its contingency on a reasonable definition of profitability which they did not use, Ypsilanti was well within reason to rely on GM's statements, made in conjunction with overwhelming course of conduct evidence indicating the corporation's intent to provide continued employment.

2. *Abbington v. Dayton Malleable, Inc.*

The court of appeals also attempted to analogize the promise in *Ypsilanti* to the statements of hope and possibility found in *Abbington v. Dayton Malleable, Inc.*³⁴⁸ The appellate court's reference to the statements in *Abbington* as "exhortations"³⁴⁹ mischaracterizes the evidence. During the tent meeting called by Dayton Malleable to explain the situation, the company representative presented two options to the assembled workers.³⁵⁰ The first was to simply close the plant down.³⁵¹ This obviously exhorts no one. The second option was the proposal to convert the plant to produce nodular steel.³⁵² The speaker qualified this option by indicating that the conversion would cost between eight and ten million dollars, that it would not happen unless the plant could cut operating losses, and that prior to conversion, the company would need the approval of the board of directors.³⁵³ In stating all the preconditions necessary for a conversion to produce nodular steel, Dayton Malleable used language which obviously reflected a clear intent to avoid making any firm commitment.³⁵⁴ Unlike General Motors, Dayton Malleable avoided making a statement indicating that they might keep their current production facility open. Accordingly, the statements by the alleged promisor in *Dayton* did not meet the legal definition of a promise, and the promisor could not be held liable for a breach thereof.³⁵⁵

Further removing the statements in *Dayton Malleable* from the scope of promissory estoppel, the speech concluded with the most

348. 561 F. Supp. 1290 (S.D. Ohio 1983), *aff'd*, 738 F.2d 438 (6th Cir. 1984).

349. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556, 559 (Mich. Ct. App. 1993).

350. *See supra* notes 100-14 (discussing the facts of *Abbington*).

351. *Abbington*, 561 F. Supp. at 1292.

352. *Id.* at 1293.

353. *Id.* at 1293 n.5.

354. *See supra* notes 109-14 (giving choices and not stating that a plan had been made; stating that there was no official approval; noting that the employees needed to make concessions).

355. *See supra* note 109 and accompanying text (providing the legal definition of promise).

rousing exhortation of the day. "I'm confident that . . . we have *at least a chance* to make this plant successful once again."³⁵⁶ Reliance on such a statement — which barely expresses hope, let alone confidence or a firm indication of intent to comply in the future — as a promise is nonsensical. The insubstantial nature of the statements and complete unreasonableness of the plaintiffs in relying on them as a promise clearly distinguish *Dayton Malleable* from *Ypsilanti*.

The appellate court's use of *Dayton Malleable* as analogous precedent is tenuous. Most importantly, the statements in that case are not buttressed in any way by course of conduct evidence. There are no past instances in which the employees had been led to rely on similar statements. This was a one-time-only exchange between the parties, unlike the deal between *Ypsilanti* and GM, who made similar agreements ten separate times in the past.³⁵⁷

Moreover, the "promise" in *Dayton Malleable* was presented only as an option. It was contingent on approval by parties unrepresented and not in attendance at the meeting. It was also *deliberately* vague and non-committal. It in no way resembled statements and actions indicating that future conduct would be consistent with an established pattern of behavior on which the Township of *Ypsilanti* reasonably relied. The promissory estoppel claim failed in *Abbingon v. Dayton Malleable* because there was not the slightest possibility that anyone could reasonably have relied on the statements. The factual similarities between the cases end with the attempted use of promissory estoppel to enjoin a plant closure, and certainly do not extend to the sufficiency of the statement/promise relied on by the respective plaintiffs.

3. *Marine Transport Lines, Inc. v. International Organization of Masters, Mates, & Pilots*

The appellate court cited *Marine Transport Lines, Inc. v. International Organization of Masters, Mates, & Pilots*³⁵⁸ for the proposition that "hyperbole and puffery in seeking an advantage or concession [do] not necessarily create a promise."³⁵⁹ The court in that case found that statements such as "we're partners," and "we look for-

356. *Abbingon*, 561 F. Supp. at 1297 (emphasis added).

357. See *supra* notes 163-86 (discussing the course of conduct between GM and *Ypsilanti*).

358. 636 F. Supp. 384 (S.D.N.Y. 1986).

359. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556, 559 (Mich. Ct. App. 1993).

ward to growing together" were insufficient to constitute promises to keep a collective bargaining agreement in force.³⁶⁰ Although the statements in *Ypsilanti* are more similar to those found not to be promises in *Marine* than to those in *Abbingdon*, the context of the declarations in *Marine* is easily distinguishable from *Ypsilanti*. In the first place, the parties in *Marine* were adversaries in a labor negotiation. They were in the midst of collective bargaining, during which negotiations were at an impasse, the employer had stated its refusal to recognize the union as the agent for bargaining, and the employer had stated its intention to unilaterally impose certain terms and conditions of employment.³⁶¹ Contrasted with the traditionally peaceful, symbiotic relationship of GM and *Ypsilanti*, the antagonism in *Marine* illustrates a situation where puffery and hyperbole to gain advantage must be seen as not only reasonable, but expected. The parties should have been aware that each was out to gain as much for itself as possible. In *Ypsilanti*, however, there was no need for such tactics. The parties had dealt honestly with one another for many years, each continuing to get what they wanted from the relationship. There was no adversity or conflict in the abatement process, and neither party should reasonably have expected the other to suddenly make claims it had no intention to keep.

Additionally, there was no course of conduct evidence available to support the existence of a promise in *Marine*, as the parties' immediate history was one of disagreement. The situation was also one in which injustice would have been avoided by the use of promissory estoppel.³⁶² The court held that it was the union's own actions which led to expiration of the collective bargaining agreement, and thus, the union could not use equity to reverse the effects of its conduct.³⁶³

The court of appeals in *Ypsilanti* properly concluded that the language in *Marine* was no more than hyperbole and puffery. There should have been no doubt to either side that such niceties during the course of tough labor negotiations were mere platitudes.³⁶⁴ In *Ypsilanti*, on the other hand, there was nothing to indicate that the parties had any intent other than that which was expressed. The

360. *Marine Transp. Lines*, 636 F. Supp. at 391.

361. *Id.* at 386.

362. *Id.* at 391.

363. *Id.*

364. *Id.* (holding the nonpromissory nature of the statements was obvious because the parties were represented by experienced labor negotiators).

court's conclusion that GM's statements were insufficient to rise to the level of a promise, even when combined with the course of conduct evidence, had a drastic and detrimental effect on the state of the law in Michigan, and on the people of Ypsilanti.

IV. IMPACT

A. *Impact on the Community*

The most devastating impact of the decision will likely be on the people and community of Ypsilanti. "[T]he loss of jobs resulting from capital disinvestment has a major impact on the workers and the community in which it occurs no matter where the capital is relocated."³⁶⁵ General Motors may save itself some money and carry on unaffected — or even better off — but Ypsilanti will not. The devastation of the plant closure will ripple through individual employees' lives, as well as through the community as a whole. It has been documented that there is a "multiplier effect" when a large employer shuts down,³⁶⁶ where the harm caused by an initial incident is followed by a series of repercussions which follow indirectly from the incident and result in even greater total damage. Like the aftershocks of an earthquake, the decline will continue indefinitely in the future. The termination of purchases by the company reduces demand for local suppliers, requiring them to layoff workers, or even shut down.³⁶⁷ Even peripheral businesses are affected. In Ypsilanti, the owner of a sandwich shop near the Willow Run plant described the ripple effect clearly. "It used to take a five-person shift to run this place. . . . If the plant closes, we cut everyone but family."³⁶⁸ The large scale layoffs and resulting decrease in buying power of the displaced workers eventually lead to layoffs and closures within the surrounding business community.³⁶⁹ The cycle could continue, reducing tax revenue for the community as property, sales, and excise taxes generate less and less governmental income.³⁷⁰ This may lead to a decay in infrastructure,³⁷¹ which leads

365. Barron, *supra* note 30, at 1390 (citation omitted).

366. *Id.* at 1396. A multiplier effect is a sociological term for a phenomenon where a precipitating cause sets off a chain reaction, exacerbating the problem created by the initial incident. See *supra* notes 42-51 and accompanying text (illustrating the principle).

367. Barron, *supra* note 30, at 1396.

368. John Lippert & Joann Muller, *GM Victory Clears Way To Shut Down Willow Run*, DET. FREE PRESS, Aug. 5, 1993, at A1.

369. Barron, *supra* note 30, at 1390, 1396-98.

370. *Id.* at 1398.

to an inability to attract new business, thus compounding the problem.

All of this occurs at a time when the need for publicly funded social services is at its highest. Unemployed workers and their families face a substantially higher risk of heart attacks, ulcers, respiratory ailments, suicide, depression, admission to mental institutions, alcoholism, divorce, child abuse, and criminal activity.³⁷² The psychological impact of a major plant closure on a community can be devastating. When combined with the increased economic burden, pressure on the community may be enough to foster an attitude that the community is collapsing, which could prevent mobilization of efforts to attract new businesses and industry.³⁷³ The prophesy of collapse may then become self-fulfilling, and the community might wither away. The company that received the abatement, however, will have taken its money and run, so as not to be caught up in the race to the bottom. This is not equity under the law.³⁷⁴

B. *Impact on Michigan Promissory Estoppel Law*

Equity under Michigan promissory estoppel law was impeded when the court of appeals' opinion worked a change in the law directly contrary to precedent established in *State Bank of Standish v. Curry*.³⁷⁵ The Supreme Court of Michigan used *Curry* as a vehicle to expand the scope of protection offered by promissory estoppel.³⁷⁶ Rather than require the *actual wording* of statements made

371. *Id.*

372. *Id.* (citing NATIONAL EMPLOYMENT PRIORITIES ACT: HEARING ON H.R. 76 BEFORE THE SUBCOMM. ON LABOR STANDARDS OF THE HOUSE COMM. ON EDUCATION AND LABOR, 95th Cong., 2d Sess. 100 (1978)).

373. *Id.* at 1396, 1398.

374. As an additional problem, the appeals court may have made an error of constitutional proportions. The Michigan Constitution, Article 9, Section 18 prohibits the government from giving away tax dollars for nothing in return. By holding that P.A. 198 does not create a binding contract or even a promise to retain jobs for the communities offering the abatements, the court may have in effect forced the Act into unconstitutionality. If a municipality can get no relief when a corporation takes tax dollars without providing any corresponding benefit to the community, this will be an unconstitutional giving, like that found in *Alan v. Wayne County*, 200 N.W.2d 628 (Mich. 1972), which may require that all Act 198 abatements be revoked and repaid in order to comply with the state constitution.

375. 500 N.W.2d 104 (Mich. 1993).

376. This can be seen in the court's disagreement with the *Curry* appellate court's narrow reading of the record as not establishing a promise. *State Bank of Standish v. Curry*, 500 N.W.2d 104, 108 (Mich. 1993). It is also indicated by the fact that there was a dissent on the grounds that the promise did not meet the standard of "clear and definite," which the dissent applied to minimize the applicability of the course of conduct evidence. *Id.* at 111-15 (Riley, J., dissenting).

by the promisor to meet the "clear and definite promise" standard, the state supreme court expressly validated the use of factors such as the nature of the relationship between the parties, and the circumstances surrounding the agreement, as important to the determination of the existence of a promise.³⁷⁷ The appellate court's dismissal of the entire bulk of course of conduct evidence in *Charter Township of Ypsilanti v. General Motors Corp.* as "showing only efforts to take advantage of a statutory opportunity"³⁷⁸ flagrantly disregards the command of *Curry* to consider course of conduct evidence. The Michigan Supreme Court's decision not to review *Ypsilanti* may be seen as implicit support for ignoring course of conduct evidence, which may cloud the issue for future litigants and stunt the growth of the equitable doctrine. This possibility is exacerbated by the short time period between the *Curry* and *Ypsilanti* decisions.³⁷⁹ This combination of factors could set the law of promissory estoppel back to its pre-*Curry* status, and wipe out a well justified, well reasoned extension of the equitable doctrine.

V. CONCLUSION

The use of promissory estoppel to prevent the closure of a facility which was granted a tax abatement after making promises of retained or increased employment is wholly consistent with the equitable nature of the doctrine. The Court of Appeals of Michigan made a grave error in reversing the trial court's determination that the Township of Ypsilanti had reasonably relied on promises made by General Motors in seeking an abatement under Public Act 198. The statements made by GM, when considered properly in the context of the course of conduct evidence, clearly support Ypsilanti's reasonable reliance on the promise. Injustice can be avoided only by enforcement of the defendant's promise of retained or increased employment for the community.

Adam Michael Lett

377. *Id.* at 108-09.

378. *Charter Township of Ypsilanti v. General Motors Corp.*, 506 N.W.2d 556, 560 (Mich. Ct. App. 1993).

379. *Curry* was decided on April 13, 1993, during the interim between the *Ypsilanti* trial and appeal. Four months later, on August 3, 1993, the appellate court misread *Curry* as supporting the dismissal of Ypsilanti's claim.

APPENDIX 1

Joint Statement by the Charter Township of Ypsilanti, Washtenaw County and General Motors Corporation regarding tentative agreement.

Representatives of the Charter Township of Ypsilanti, Washtenaw County and General Motors today announced that they have reached an Agreement aimed at restoring the good working relationships they had enjoyed for many years. General Motors continues to own and operate a large transmission plant in Ypsilanti Township and owns the Willow Run Assembly Plant property that closed last year.

The highlights of the Agreement are as follows:

The parties will cooperate in pursuing a productive reuse of the closed Willow Run Assembly Plant site.

GM will pursue reuse, redevelopment or sale of the Willow Run Assembly Plant site and will remove equipment and other obstructions to prepare the site. The Township will be informed of progress in pursuing reuse of the site.

GM will conduct any environment assessment and cleanup of the Assembly Plant site that may be required for compliance with Michigan and federal law.

The Township and County will provide assistance by retaining the Industrial Development District, and meeting with prospective purchasers to discuss the availability of tax incentives or other accommodations.

The Agreement also provides for cooperation between the parties in the continued operations at the GM Powertrain Group Transmission Plant.

GM will be proceeding with investments in 1994 for projects that are expected to involve aggregate investments of approximately \$80 million in new equipment and machinery.

The Township and County will be supporting GM's investments by retaining the Plant Rehabilitation District and new 12 year tax abatements for the investments.

Under the new amendments to the Michigan tax abatement law,

for the first time there will be a tax abatement contract that will give the Township and County the right to seek part of the abated taxes after the first six years following the construction period if employment targets are not achieved.

The Agreement further provides for the parties to participate in the Washtenaw Development Council and the Willow Run Airport Economic Opportunity Center Steering Committee.

To avoid tax assessment disputes, the Agreement provides for the parties to cooperate in determining an equitable assessment annually for the GM properties.

GM has agreed to donate certain computer and office equipment for use in the County's new Ethel M. Howard Training Center.

Lastly, the remaining claims in the lawsuit over the Willow Run Assembly Plant closing will be dismissed.

The assistance of court appointed Special Master Douglas Kahn, a law professor at the University of Michigan Law School, was invaluable in reaching the Agreement. The Township, County and General Motors especially extend their appreciation to Professor Kahn for his efforts.

APPENDIX 2

AGREEMENT

This Agreement ("Agreement") is entered into this 25th day of April, 1994 between the Charter Township of Ypsilanti (the "Township"), the County of Washtenaw County (the "County"), the State of Michigan, and General Motors Corporation ("GM"), through their undersigned authorized representatives.

RECITALS

A. For many years, GM has operated two large manufacturing facilities located in the Township - the Willow Run Assembly Plant ("Willow Run") and the GM Powertrain Group Willow Run Transmission Plant ("Hydramatic"). These plants have provided employment to thousands of Township and County residents. The Township and County, and their residents have benefitted from having GM as an employer, taxpayer, and corporate citizen.

B. For many years, the Township and County have passed resolutions approving substantial tax abatements to GM. These tax abatements have been an incentive to GM investing hundreds of millions of dollars at Willow Run and Hydramatic by reducing the property taxes on GM's investments by millions of dollars.

C. During most of these years, the Township, the County, and GM worked together in a spirit of mutual respect and cooperation. For example, GM has played an active role in the community by encouraging employee contributions and making corporate contributions to the Washtenaw County United Way and having employees serve in a variety of community organizations.

D. In December 1991, GM announced that the operations of Willow Run and a plant in Arlington, Texas would be consolidated and one of the plants would be closed as part of an overall plan to reduce excess manufacturing capacity to improve its competitiveness. On February 24, 1992, GM announced that the consolidation would be at the Arlington plant and that Willow Run would cease operation by the Summer of 1993.

E. On April 29, 1992, the Township filed suit against GM in an effort to keep Willow Run open. The decision to bring suit against GM was difficult for the Township and County, but they concluded

that this action was necessary to protect the rights and interests of their citizens. The Township and County stand by their decision.

F. In September 1993, GM began consolidation at the Arlington plant and ceased production at Willow Run. In connection with the Willow Run plant closing and its efforts to sell or otherwise dispose of the Willow Run Assembly Plant property, and in accordance with its regular procedures for the closing and disposition of industrial properties GM plans to:

1. conduct any environmental assessment and remediation that may be required for compliance with Michigan and federal law at the Willow Run site.
2. evaluate the prospects for reuse and/or redevelopment of Willow Run.
3. maintain the property and prepare the site for reuse or disposition in an appropriate manner consistent with its marketing effort, including any selective demolition that it deems necessary.

G. After extensive litigation and negotiations, GM, the Township, and the County have reached this Agreement in an effort to improve relations, to restore mutual respect, to serve the common interests of the parties, and to resolve all pending disputes. Dismissal of the lawsuit is also expected to facilitate efforts to reuse, redevelop and/or sell the Willow Run site. Renewed use of the Willow Run site and employment associated with such renewed use would be expected to increase participation in and contributions to charitable and community organizations serving the Township and Country.

AGREEMENT OF THE PARTIES

Wherefore, the parties hereto agree as follows:

1. GM will make reasonable efforts to pursue reuse, redevelopment and/or sale of the Willow Run site. GM agrees to advise the Township Treasurer of the status of efforts to pursue the reuse, redevelopment and/or sale of the Willow Run site in writing at least one time every three months following the date of execution of this agreement and to give appropriate consideration to their views concerning GM's plans for reuse, redevelopment and/or sale. As part of its efforts, GM will remove machinery, equipment and other obstruction within the facility to prepare the site for reuse/redevelopment and/

or sale. While GM may elect to demolish selected portions of the facility as part of its reuse, redevelopment and/or sale efforts, GM will not demolish the entire facility unless and until it determines that further reuse redevelopment and/or sale efforts will not be reasonably likely to be successful within a reasonable period of time.

2. GM plans to proceed with two new investments at Hydramatic which are estimated to involve an aggregate investment of approximately \$80 million. GM will begin to invest in new machinery and/or equipment for these projects in 1994.

3. GM agrees to conduct any environmental assessment and remediation that is required for its compliance with Michigan and federal law at Willow Run. Documents submitted to the Michigan Department of Natural Resource and/or the United States Environmental Protection Agency regarding any such environmental assessment and remediation will be available for public inspection.

4. GM agrees to designate an individual(s) to participate on its behalf on the Washtenaw Development Council and the Willow Run Airport Economic Opportunity Center Steering Committee.

5. GM agrees to donate the computer and office equipment and furniture listed on the Attachment to this Agreement for the use of the Ethel M. Howard Training Center.

6. The Township and County agree to assist GM in its efforts to pursue reuse, redevelopment and/or sale of Willow Run. To this end, the Township and County specifically agree as follows:

- A. The Township and County will not revoke any Industrial Development District currently in existence at Willow Run for twenty (20) years, unless requested by GM.
- B. The Township and County will designate individuals to participate on their behalf in the Washtenaw Development Council and the Willow Run Airport Economic Opportunity Center Steering Committee.
- C. At GM's request, the Township and County agree to meet with representatives of GM and/or any purchaser or prospective purchaser of Willow Run to discuss the availability of Industrial Facilities Exemption Certificates of such other special accommodations as the purchaser or prospective purchaser may wish to propose.

7. The parties concur that it is in their mutual best interests to (i) provide GM with incentives to invest in Hydramatic and maintain employment there, (ii) provide the Township and County with incentive to confer tax relief for GM, (iii) allow GM flexibility to deal with changing business conditions, and (iv) protect the Township and County in the event that tax relief granted ceases to continue to serve the public interest. To achieve these mutual objectives, the parties agree as follows:

- A. GM agrees to request, and the Township and County agree to approve, an Industrial Facilities Exemption Certificate for a duration of twelve (12) years, plus the allowable construction period, provided that GM proceeds with its planned 1994 investments at Hydramatic.
- B. The Township and County agree that they will not revoke any Plant Rehabilitation District currently in existence at Hydramatic for twenty (20) years.
- C. The parties agree that the goal of the planned 1994 investments at Hydramatic are to maintain employment of 729 full time employees by increasing capacity on front drive transmissions and 158 full time employees by increasing capacity on rear drive transmissions and engineering support.
- D. GM shall be deemed to achieved these employment goals if the actual number of full time employees at the two investment projects does not fall below 729 and 158, respectively, on average for any year following the allowed construction period plus six years after the issuance of the Industrial Facilities Exemption Certificate ("Certificate") for the planned 1994 investments at Hydramatic.
- E. In the event that the average number of full time employees at the two investment facilities at Hydramatic falls below 729 and 158, respectively, for any annual period following the allowed construction period plus six years after the issuance of the Industrial Facilities Exemption Certificate ("employment shortfall"), GM shall notify the Township within 30 days thereafter. For purposes of calculating the employment shortfall, downtime at the facility for which a Certificate is granted due to model changeovers, parts shortages as a result of parts quality or availability of raw materials, strikes, and acts of God shall not be included.

- F. In the event of an employment shortfall, the Township and County shall confer with GM and, if they are not satisfied that the objectives of the Certificate are being served, may demand, and GM shall pay, an amount not to exceed the proportion of the taxes saved as result of the Certificate for the investment facility for which the year in which there is an employment shortfall which is equal to the proportion of that employment shortfall to the total employment goal for that investment facility. The following example illustrates the application of this provision:

For example, if the employment goal for an investment facility were 500 full time employees and the average annual employment for the investment facility for the year following the construction period plus six years after the issuance of the Certificate is 450, the Township and County may demand that GM pay an amount of up to ten (10) percent of the property taxes saved as a result of the Certificate on the investment facility for the year in which there is an employment shortfall.

- G. It is understood and agreed that GM does not agree to maintain any specified level of employment for any period of time. GM sole obligation in the event of an employment shortfall as defined herein is to pay a portion of the property taxes on the investment facility saved as a result of the Certificate as provided herein.

8. GM and the Township and County agree to cooperate in determining an equitable assessment annually for each of the next three years for the Willow Run and Hydramatic properties.

9. GM, the Township, the County, and the State will execute a stipulated Order dismissing with prejudice the lawsuit entitled *Charter Township of Ypsilanti, et al v. General Motors Corp.*, Case No. 92-43075-CK, pending in Washtenaw County Circuit Court. No party shall recover any costs or attorneys' fees related to this lawsuit or any of the attendant appeals, and this shall be reflected in the stipulated order.

10. This Agreement is the entire agreement of the parties relating to the matters covered by the Agreement, and no prior or subse-

quent promises, representations or assurances, whether oral or in writing or in any other form, shall be used to modify, vary or contradict any provision of this Agreement, except for any written amendment to this Agreement or separate agreement signed following the date of this Agreement by authorized representatives of all parties to this Agreement.

11. This Agreement shall be governed by the law of the State of Michigan.

**CHARTER TOWNSHIP OF
YPSILANTI**

**GENERAL MOTORS
CORPORATION**

/s/ Wesley E. Prater
By: Wesley E. Prater
Township Supervisor

/s/ Lee A. Schutzman
By: Lee A. Schutzman
Attorney

/s/ Brenda L. Stumbo
By: Brenda L. Stumbo
Township Clerk

WASHTENAW COUNTY

/s/ Robert E. Guenzel
By: Robert E. Guenzel
County Counsel

ATTACHMENT

GM CONTRIBUTION TO ETHEL M. HOWARD TRAINING CENTER

Following is a list of computer and office equipment that will be donated to the Ethel M. Howard Training Center. These computers and office equipment have been used in General Motors operations and are in functional condition.

| <u>QUANTITY</u> | <u>DESCRIPTION</u> |
|-----------------|--|
| 25 | AT or XT IBM Compatible PC's |
| 2 | Apple Mac's with Laser Printer for Prep of Resumes |
| | -25 Lotus Work Sheets |
| | -25 IBM Writing Assistant |
| | -DOS and Menu Software |
| 6 | Epsom Dot Matrix Printers |
| 2 | Typewriters |
| 1 | Overhead projector |
| 1 | Fax Machine |
| 4 | Work Tables |
| 30 | Assorted Chairs |
| 2 | Dry Marker Boards |
| 2 | Secretarial Desks |