

STATE OF MICHIGAN  
IN THE SUPREME COURT

ISKANDAR MANUEL, MAGGIE MANUEL,  
JIMMY MANUEL, JOSEPH MANUEL,  
IMAD MANUEL, ADEL MANUEL,  
Plaintiffs-Appellees,

Supreme Court No.:131103  
Court of Appeals No.: 258933  
Lower Ct. No.: 03-1944-NO

v

TIMOTHY J. GILL, COUNTY OF CLINTON,  
COUNTY OF EATON, RUSTY BANEHOFF,  
COUNTY OF INGHAM, EATON COUNTY  
SHERIFF, CLINTON COUNTY SHERIFF,  
KENNETH KNOWLTON, LANSING CHIEF  
OF POLICE, CITY OF LANSING, LANSING  
POLICE COMMISSION, JIMMY PATRICK,  
and INGHAM COUNTY SHERIFF,  
Defendant-Appellees  
and TRI-COUNTY METRO NARCOTICS SQUAD,  
Defendant-Appellant.

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PLAINTIFF-APPELLEES' BRIEF

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CONTENTS

INDEX OF AUTHORITIES.....ii  
QUESTION PRESENTED .....iii  
STATEMENT OF PROCEEDINGS.....iv  
COUNTERSTATEMENT OF FACTS.....1  
ARGUMENT .....8

ARGUMENT I:

**TRI-COUNTY METRO NARCOTICS SQUAD IS CAPABLE OF BEING  
SUED, WHERE IT CREATED A SEPARATE LEGAL OR  
ADMINISTRATIVE AGENCY IN THE FORM OF A COMMAND  
BOARD, WHERE THE SEPARATE ENTITY IS A PUBLIC BODY, AND  
WHERE THE LEGISLATURE GRANTED SUCH ENTITIES THE  
CAPACITY TO SUE OR BE SUED.....8**

ARGUMENT II:

**TCM IS NOT A STATE AGENCY, WHERE IT WAS CREATED BY AN  
INTERLOCAL AGREEMENT, WHERE ITS FUNDING IS PRIMARILY  
PROVIDED FOR BY LOCAL UNITS OF GOVERNMENT, WHERE IT IS  
GOVERNED BY A COMMAND BOARD CONTROLLED BY LOCAL UNITS  
OF GOVERNMENT, AND WHERE LOCAL UNITS OF GOVERNMENT  
RETAIN THE ASSETS FORFEITED TO TCM.....10**

ARGUMENT III:

**WHETHER TCM IS AN AGGRIEVED PARTY ENTITLED TO APPEAL,  
WHERE THE RULING THAT IT IS A STATE AGENCY IS CONTROLLING  
AUTHORITY UNLESS REVERSED OR MODIFIED BY THE SUPREME  
COURT OR A SPECIAL PANEL OF THE COURT OF APPEALS, AND  
WHERE PLAINTIFF-APPELLEES HAVE FILED A CASE IN THE COURT  
OF CLAIMS, WHICH IS PRESENTLY BEING HELD IN ABEYANCE  
PENDING RESOLUTION OF THIS MATTER.....11**

Conclusion .....12

Relief Requested .....13

**INDEX OF AUTHORITIES**

**CASES**

*Hanselman v Wayne Co Concealed Weapon Licensing Bd*, 419 Mich 168; 351 NW2d 544  
(1984).....11

*Hervey v Estes*, 65 F3d 784 (CA 9, 1995).....9

*Marchese v Lucas*, 758 F2d 181, (CA 6, 1985), cert den 480 US 916 (1987).....10

*People v Doyle*, 451 Mich 93; 545 NW2d 627 (1996).....12

*People v. Webb*, 458 Mich 265; 580 NW2d 884 (1998).....8, 10

*Spiek v Dep't of Transportation*, 456 Mich 331; 572 NW2d 201 (1998).....8, 10

*Timberlake v Benton*, 786 F Supp 676 (MD Tenn, 1992).....9, 10

**STATUTES**

MCL 24.201 .....11

MCL 124.507(1).....9, 10

MCL 124.507(2).....9

**OTHER**

Administrative Order No. 1990-6 .....12

Administrative Order No. 1994-4 .....12

## QUESTIONS PRESENTED

1. **WHETHER TRI-COUNTY METRO NARCOTICS SQUAD IS CAPABLE OF BEING SUED, WHERE IT CREATED A SEPARATE LEGAL OR ADMINISTRATIVE AGENCY IN THE FORM OF A COMMAND BOARD, WHERE THE SEPARATE ENTITY IS A PUBLIC BODY, AND WHERE THE LEGISLATURE GRANTED SUCH ENTITIES THE CAPACITY TO SUE OR BE SUED.**
  
2. **WHETHER TCM IS A STATE AGENCY, WHERE IT WAS CREATED BY AN INTERLOCAL AGREEMENT, WHERE ITS FUNDING IS PRIMARILY PROVIDED FOR BY LOCAL UNITS OF GOVERNMENT, WHERE IT IS GOVERNED BY A COMMAND BOARD CONTROLLED BY LOCAL UNITS OF GOVERNMENT, AND WHERE LOCAL UNITS OF GOVERNMENT RETAIN THE ASSETS FORFEITED TO TCM.**
  
3. **WHETHER TCM IS AN AGGRIEVED PARTY ENTITLED TO APPEAL, WHERE THE RULING THAT IT IS A STATE AGENCY IS CONTROLLING AUTHORITY UNLESS REVERSED OR MODIFIED BY THE SUPREME COURT OR A SPECIAL PANEL OF THE COURT OF APPEALS, AND WHERE PLAINTIFF-APPELLEES HAVE FILED A CASE IN THE COURT OF CLAIMS, WHICH IS PRESENTLY BEING HELD IN ABEYANCE PENDING RESOLUTION OF THIS MATTER.**

**STATEMENT OF PROCEEDINGS**

Plaintiff-Appellees accept Defendant-Appellant's essential statements of proceedings, and reject any characterizations and legal conclusions inconsistent with this brief.

## COUNTER STATEMENT OF FACTS

This case arises from a three-year undercover operation operated by Tri-County Metro Narcotics Squad, [hereinafter TCM], out of Plaintiffs' residence and family car dealership. Plaintiff, Iskandar Manuel, was asked by TCM, in 1998, to assist them in building a case against a local drug dealer named Toby Torres, who was a customer of the family business. *See* (Plaintiffs' First Amended Complaint, ¶¶ 31-37. )

Plaintiff, Iskandar Manuel, was initially reluctant to provide assistance, but after repeated appeals were made to his sense of civic-duty and concern for his own family, he eventually agreed to assist TCM, in 1999, after he was assured that his identity wouldn't be disclosed, and that TCM would reimburse him for any expenses he incurred and any losses incurred by the family business. Mr. Manuel kept TCM informed of planned drive by shootings, drug dealings, and other criminal activity of Mr. Torres and his acquaintances. During this time, TCM set up the family residence and business to videotape meetings and record phone calls. The other plaintiffs, Mrs. Manuel and the couples four sons, also lived in family residence and worked in the family business. Mr. Manuel's sons never consented to being exposed to such danger, and were never even informed of the operation until it was well underway. *See* (Plaintiffs' First Amended Complaint, ¶¶ 38-48. )

The operation expanded beyond Toby Torres, and targeted numerous major dealers. In an effort to convince the drug dealers that the Mr. Manuel was also a major drug dealer, TCM sent officers to Plaintiffs' residence and business, with kilograms of cocaine and bags of money, during meetings with the drug dealers. The operation was quite successful, resulting in the prosecution of numerous dealers. However, the operation also generated enormous amounts of

evidence, much of which made the assistance of Plaintiffs readily apparent. Hundreds of video and audio recordings were made at Plaintiffs' residence and family business, and several search warrants were issued for the vehicles of the drug dealers, while they were being held by Plaintiff, Iskandar Manuel. Mr. Manuel was even asked to sign a consent to search form for a residence he owned, that was occupied by a target of the operation.

Individual officers working for TCM, also undertook various actions from which the dealers could readily discern that Plaintiffs were assisting TCM. Mr. Manuel gave Defendant Lt. Kenneth Knowlton, the phone number of the girlfriend of one drug dealer arrested in the operation, in 2001, which Defendant Knowlton promptly used to call the girlfriend seeking her cooperation. Defendant Knowlton admitted this to Plaintiff, Iskandar Manuel, who was then contacted by the girlfriend who informed him that they were of the belief that Mr. Manuel was assisting TCM, because Defendant Knowlton had contacted her using that number and because Mr. Manuel's name was on paperwork associated with the prosecution of the dealer. *See* (Plaintiffs' First Amended Complaint, ¶¶ 61-62). Defendant Knowlton also sent the brother of one of the targeted drug dealers that knew Defendant Knowlton worked for TCM, to Mr. Manuel's place of business, in 2002. This person informed Mr. Manuel that Defendant Knowlton had vouched for Mr. Manuel, saying that he was a good guy. Mr. Torres also informed Mr. Manuel that his probation agent had informed him the Mr. Manuel was working with TCM, in 2000. *See* (Plaintiffs' First Amended Complaint, ¶¶ 55-56).

In 2001, Defendant, Lt. Timothy Gill called officers arresting a dealer over their two way radio, and stated loud enough for the dealer to hear that they had also arrested Mr. Manuel with \$120,000, despite the fact that the drug dealer had a place of business right next to Mr. Manuel's

family business. Because Defendant Gill did not inform Mr. Manuel of the subterfuge, the dealer and his son were able to readily figure that Mr. Manuel must be working with the police, when the dealer's son spotted Mr. Manuel moments after the arrest at the family business, indicating that Mr. Manuel had not been arrested. The dealers' son told Mr. Manuel that he was aware the Mr. Manuel was working with TCM and refused to pay for the impound fees on the vehicle Mr. Manuel had lent the dealer to conduct the transaction. In 2002, during a meeting with drug dealers, Defendant Gill also called Mr. Manuel via a cell phone, while he was in a room with numerous drug dealers, to inquire whether he had seen any cocaine. The call was loud enough for the dealers to hear and raised their suspicions about Mr. Manuel. *See* (Plaintiffs' First Amended Complaint, ¶ 63-64).

Early in the year of 2002, Mr. Manuel assisted Defendants Lt. Timothy Gill, Lt. Kenneth Knowlton, Officer Rusty Bannehoff, and TCM in setting up a drug buy from a couple of men known as Chris and Gee. Gee purchased drugs from Chris, and Mr. Manuel showed defendants where Gee lived, gave them the name and license number of Gee's girlfriend, and also informed them that the girlfriend's brother, Edward, purchased drugs from Gee. Mr. Manuel furnished the license plate number so that defendants would be able to get a picture of Gee's girlfriend, as they had on numerous other occasions when Mr. Manuel had supplied them with such information.

Defendant Bannehoff knew Gee's girlfriend and also knew her brother Edward and had been friends with him for 25 years. Despite this, Defendant Bannehoff was allowed to remain on the investigation and on or about March 5, 2002, Defendant Bannehoff disclosed to Edward that Mr. Manuel was working with TCM and that they had attempted to set up Chris in a drug sting. *See* (Plaintiffs' First Amended Complaint, ¶¶ 65-70. ). Mr. Manuel overheard Defendant

Bannehoff admit that he informed his friend that hours earlier he had assisted TCM in arranging a drug deal, where drugs and cash would be exchanged for a vehicle at a car dealership. An associate of the target called Mr. Manuel the next day to inquire how TCM knew all about the transaction that Mr. Manuel had arranged the day before.

In the summer of 2001 Defendants Gill, Knowlton, and TCM set up a drug buy where the traffickers were to deliver 500 lbs. of marijuana and 50 kilograms of cocaine. The traffickers did not deliver the cocaine, but did deliver the marijuana; however, defendants Gill, Knowlton, and TCM refused to pay the \$300,000, for the marijuana, and informed the dealers that they would not pay unless they delivered the cocaine. The cocaine was never delivered and due to the botched deal and the fact that the traffickers were never paid for the marijuana they delivered, Mr. Manuel has received repeated threats to the safety of him and his family. *See* (Plaintiffs' First Amended Complaint, ¶¶ 57-60).

Plaintiffs alleged that the actions of all the defendants violated their constitutional right to be free from state created danger.<sup>1</sup> Plaintiffs specifically claimed that defendants, TCM, the principal entities that comprise TCM, and the policy makers of those entities in their official capacity, engaged in concerted activities through TCM, and established customs and policies of TCM, which allowed the individuals that ran the squad and acted within the squad, to violate the Plaintiffs' constitutional rights, by exposing them to state created danger. Plaintiffs further alleged that these defendants were informed of and ratified the actions of the squad, failed to train the squad to ensure Plaintiffs' safety, when it became apparent training was needed, and

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<sup>1</sup> Retired Captain Jimmy Patrick of the Michigan State police was never served with the complaint and should be deemed dismissed from the action, pursuant to MCR 2.102(E).

failed to terminate or curtail the activities of the squad, when it became apparent that the squad was violating Plaintiffs' rights to be free from state created danger. Plaintiffs alleged that such actions and/or inaction over the course of the three-year operation indicates a policy and custom of the entities that allowed the squad to violate Plaintiffs' right to be free from state created danger. *See* (Plaintiffs' First Amended Complaint, COUNTS X.)

Plaintiffs also alleged that the individual defendants Knowlton and Gill, who were in charge of setting up, running, and overseeing the operation through TCM, violated their constitutional rights to be free from state created danger, in the manner in which they set up and carried out the operation. Plaintiffs additionally claimed that the defendants, individual actions while running the operation violated their constitutional right to be free from state created danger, were grossly negligent, and intentionally and/or grossly negligently caused the infliction of emotional distress. *See* (Plaintiffs' First Amended Complaint, COUNTS IV-VII.)

Plaintiffs claimed that the individual actions of Defendant Banehoff, in disclosing information to a known acquaintance of a target of the investigation, that Mr. Manuel was assisting TCM in setting up a sting of the target, violated Plaintiffs' constitutional right to be free from state created danger, grossly negligent, and intentionally and/or grossly negligently caused the infliction of emotional distress on the plaintiffs. *See* (Plaintiffs' First Amended Complaint, COUNTS I-III.)

Plaintiffs also alleged in that TCM breached an express and/or implied contract to reimburse plaintiffs for expenses incurred in carrying out the operation, as well as losses incurred as a result of the operation. *See* (Plaintiffs' First Amended Complaint, COUNT XI.)

Instead of filing an answer, defendants Gill, Knowlton, and TCM filed a motion for

summary judgment, pursuant to MCR 2.116 (C)(7&8), alleging that Plaintiffs had failed to state a claim against Defendants because the statute of limitations had expired on all the claims, and because TCM did not have the capacity to be sued. They also filed a supplemental brief, after the hearing on the motion was held, alleging Plaintiffs' claims were barred by Defendants' qualified immunity. Defendants, Eaton County and Eaton County Sheriff, in his official capacity, filed a motion for summary judgment, pursuant to MCR 2.116 (C)(7, 8, & 10), alleging that Plaintiffs' claim were barred by the statute of limitations, that Plaintiffs had failed to identify a constitutional right that was violated by county policy, and that there was not issue of material fact concerning defendants lack of involvement in the alleged wrongs. In responding to the motion, Plaintiffs informed the trial court that discovery had not even begun, and that summary judgment would only be appropriate if it were clear that discovery could not uncover any factual development that would support their claims.

These motions were heard on March 17, 2004, and taken under advisement. This hearing also resulted in an order barring discovery, until the trial court ruled on the motions.

Defendants Ingham County, Ingham County Sheriff, in his official capacity, and Officer Banehoff, filed a motion for summary judgement, pursuant to MCR 2.116(C)(7, 8, & 10), alleging that Plaintiffs' claims were barred by the statute of limitations, that Plaintiffs' claims were barred by governmental immunity, that Plaintiffs had failed to state a claim on which relief could be granted, and that there was not genuine issue of material fact. Defendants City of Lansing, Lansing Police Commission, and Lansing Chief of Police, in his official capacity, filed a motion for summary judgment, pursuant to Fed R Civ P 12© and/or 56(c), alleging that Plaintiffs' claims were barred by the statute of limitations, that Plaintiffs had not alleged facts

evidencing a policy or procedure of defendants that was the moving force behind the claim, or that defendants had failed to train. These motions were heard on May 19, 2004, and also taken under advisement.

Plaintiffs filed responses to the motions and supporting briefs, along with affidavits of Iskandar Manuel, in support of their claims against defendants. In their response, Plaintiffs requested leave to amend the complaint to cure any deficiencies. Plaintiffs also pointed out that enormous amounts of evidence was in the exclusive possession of Defendants, which they believed would support their claims, would allow them to establish exact identities, and the exact dates of events alleged in the complaint, and the policies and procedures of TCM, if they were allowed discovery. The trial court consolidated the motions and considered all the motions, responses, briefs, and oral argument, and dismissed all of Plaintiffs' claims, pursuant to MCR 2.116(C)(8), for failure to state a claim upon which relief could be granted. Plaintiffs also sought an Order of Mandamus, requiring the Defendants to take remedial action to safeguard Plaintiffs' safety, which was opposed by Defendants and denied by the trial court, after a show cause hearing on the matter held on June 17, 2004.

The trial court determined that Plaintiffs failed to state a cause of action, pursuant to 42 USC §1983, based on a state created danger theory, because none of the individual actions of Defendant Gill, Knowlton, and Banehoff, infringed on a cognizable right and they were entitled to qualified immunity; therefore, Plaintiffs had failed to state a claim against any of the defendants. The trial court determined that the actions of defendants, which were alleged by Plaintiffs, were nothing more than conduct implicit in an undercover operation. The trial court also determined that Plaintiffs had failed to state a claim for gross negligence and for intentional

or negligent infliction of emotional distress against Defendant Gill, Knowlton, and Banehoff, for the same reasons. Finally the court determined that Plaintiffs had failed to state a cause of action based on a contract because the allegations were conclusory and such action would be barred by the statute of frauds.

As a result of the Plaintiffs noble sacrifice, and the fact that the Defendants clearly painted a target on their back, and destroyed the family business, Plaintiffs now live in constant fear and poverty.

On Appeal the Michigan Court of Appeals upheld the rulings of the trial court except on the contract claim. However, the court upheld the dismissal of the contract based on its determination that TCM was a state agency and the claim should be filed in the Court of Claims.

#### ARGUMENT I

**TRI-COUNTY METRO NARCOTICS SQUAD IS CAPABLE OF BEING SUED, WHERE IT CREATED A SEPARATE LEGAL OR ADMINISTRATIVE AGENCY IN THE FORM OF A COMMAND BOARD, WHERE THE SEPARATE ENTITY IS A PUBLIC BODY, AND WHERE THE LEGISLATURE GRANTED SUCH ENTITIES THE CAPACITY TO SUE OR BE SUED.**

This Court reviews an order granting or denying summary disposition de novo as a question of law. *See Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Issues of statutory interpretation are also reviewed de novo. *See People v. Webb*, 458 Mich. 265, 274; 580 NW2d 884 (1998).

Defendant-Appellant argues that Tri-County Metro Narcotics Squad [hereinafter TCM], is not a legal entity capable of being sued. The trial court and appellate court correctly determined that it was capable of being sued.

The arguments of Defendant-Appellant, in regard to their assertion that TCM's is not a state agency, clearly indicates that TCM's interlocal agreement created a separate legal or

administrative agency, in the form of a command board, to administer and execute the agreement, pursuant to the Urban Cooperation Act, MCL 124.501 *et. seq.* As such, the entity “shall be a public body, corporate or politic for purposes of this act.” MCL 124.507(1).

Further, MCL 124.507(2) provides that:

A separate legal or administrative entity created by an interlocal agreement shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided for in the agreement. The entity may be, in addition to its other powers, authorized in its own name to make and enter into contracts, to employ agencies or employees, to acquire, construct manage, maintain, or operate buildings, works, or improvements, to acquire, hold, or dispose of property, to incur debts, liabilities, or obligations that, except as expressly authorized by the parties, do not constitute the debts, liabilities, or obligations of any of the parties to the agreement, to cooperate with a public agency, an agency or instrumentality of that public agency, or any other legal or administrative entity created by that public agency under this act, to make loans from the proceeds of gifts, grants, assistance funds, or bequests pursuant to the terms of the interlocal agreement creating the entity, and to form other entities necessary to further the purpose of the interlocal agreement. **The entity may sue or be sued in its own name.** (Emphasis added.)

Clearly the capacity to sue or be sued is expressly granted to the entity by statute. The statute sets forth that the entity may exercise the general powers specified in the agreement, in the first sentence, the additional powers that may be authorized in the second sentence, and the specific power to sue or be sued is granted by statute in the third sentence. The statute is a legislative grant of authority that not only sets forth the powers the entity shall have, but authorizes the creation of additional powers. And the last sentence of the statute clearly indicates that the legislature vested the entity with the capacity to sue or be sued, as it does not require that it be specified or authorized.

Defendant-Appellants reliance on *Timberlake v Benton*, 786 F Supp 676 (MD Tenn, 1992) and *Hervey v Estes*, 65 F3d 784 (CA 9, 1995) is misplaced, because those cases dealt with

statutory interpretation of the respective states' statutes. In this case, the Michigan statute itself defines a separate legal or administrative entity created in the form of a command board to carry out the agreement as being a public body corporate or private. MCL 124.507(1). TCM created such an entity, and may sue or be sued as is clearly expressed in the statute, which is plain and unambiguous.

Moreover, even if it could be said that TCM is not capable of being sued, a lawsuit against TCM should not be dismissed as it is 'in fact a suit against the cities and counties comprising the Task Force,' and naming TCM as the defendant is tantamount to naming the individual entities comprising TCM. *Timberlake*, 786 F Supp at 683; *see also Marchese v Lucas*, 758 F2d 181, (CA 6, 1985), cert den 480 US 916 (1987).

## ARGUMENT II

**TCM IS NOT A STATE AGENCY, WHERE IT WAS CREATED BY AN INTERLOCAL AGREEMENT, WHERE ITS FUNDING IS PRIMARILY PROVIDED FOR BY LOCAL UNITS OF GOVERNMENT, WHERE IT IS GOVERNED BY A COMMAND BOARD CONTROLLED BY LOCAL UNITS OF GOVERNMENT, AND WHERE LOCAL UNITS OF GOVERNMENT RETAIN THE ASSETS FORFEITED TO TCM.**

This Court reviews an order granting or denying summary disposition de novo as a question of law. *See Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Issues of statutory interpretation are also reviewed de novo. *See People v. Webb*, 458 Mich. 265, 274; 580 NW2d 884 (1998).

Plaintiff-Appellees' have always maintained that TCM is not a state agency. Until oral argument before the Michigan Court of Appeals, Defendant-Appellant has always claimed that TCM is a state agency. One must wonder whether Defendant-Appellant was swayed by Plaintiffs' counsel's argument, or whether it was in fact presenting a defense it deemed invalid, in the belief that it would never become a holding of the Michigan Court of Appeals in a

published opinion, which caused Plaintiff-Appellees to expend considerable time and resources opposing this position,

However, TCM was created by an interlocal agreement entered into by local governmental agencies. *See* (Defendant-Appellant 's Application for Leave to Appeal, Exhibit 1, Interagency Agreement for Tri-County Metro Narcotics Squad.) The funding for TCM is provided for by the local governmental units and forfeited assets are retained by the local units. *See Id.* (1999 Amendment.) Through a command board dominated by representatives of the local agencies, the local governmental units retain control over the operations. *See Id.* (Interagency Agreement for Tri-County Metro Narcotics Squad, Article I, § II.)

Applying the factors analyzed by this Court in *Hanselman v Wayne Co Concealed Weapon Licensing Bd*, 419 Mich 168; 351 NW2d 544 (1984), TCM is clearly not a state agency. Although *Hanselman* was concerned with application of the Michigan Administrative Procedures Act, MCL 24.201 *et seq*, any distinction would be stilted and artificial. Further, the contract for which Plaintiff-Appellees' seek reimbursement would be properly be classified as an operational cost and would not come out of the State Treasury. *See* (Defendant-Appellant 's Application for Leave to Appeal, Exhibit 1, 1999 Amendment, § § 1&2.)

### ARGUMENT III

**WHETHER TCM IS AN AGGRIEVED PARTY ENTITLED TO APPEAL, WHERE THE RULING THAT IT IS A STATE AGENCY IS CONTROLLING AUTHORITY UNLESS REVERSED OR MODIFIED BY THE SUPREME COURT OR A SPECIAL PANEL OF THE COURT OF APPEALS, AND WHERE PLAINTIFF-APPELLEES HAVE FILED A CASE IN THE COURT OF CLAIMS, WHICH IS PRESENTLY BEING HELD IN ABEYANCE PENDING RESOLUTION OF THIS MATTER.**

In August of 2006, Plaintiff-Appellees' filed their contract case in the Court of Claims,

Case No: 06-119-MK, which is presently being held in abeyance pending resolution of this matter.

Administrative Order No. 1990-6, as modified by Administrative Order No. 1994-4 provides in pertinent part:

A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990. The prior published decision remains controlling authority unless reversed or modified by the Supreme Court or a special panel of the Court of Appeals as provided in this order. A panel which follows a prior published decision only because it is required to do so shall so indicate in the text of its opinion, citing this administrative order and providing a statement of wherein and why it disagrees with the prior published opinion. *People v Doyle*, 451 Mich 93, 99 n10; 545 NW2d 627 (1996).

TCM is bound by the decision of the Court of Appeals, and as such is an aggrieved party, as the ruling is adverse to its present position. It would be contrary to principles of judicial economy to create a situation where TCM could not appeal the ruling in this case, yet it could arguably appeal this ruling in that case.

### **CONCLUSION**

TCM is capable of suing and being sued. This ability is granted by statute and does not need to be authorized or specified. It is an interlocal agency and not a state agency; therefore, the Michigan Court of Appeals should have remanded the contract action to the circuit court. In the event it is deemed to be an agency that is not capable of being sued, then naming TCM as the Defendant is tantamount to naming the principle agencies that comprise TCM, and dismissal is

still inappropriate and the case should be remanded to the circuit court and consolidated with the Court of Claims case filed in this matter, because the principle agencies are all on notice of the claim and have appeared in this matter.

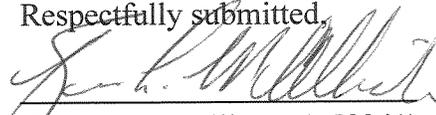
**REQUEST FOR RELIEF**

**WHEREFORE**, the Plaintiff-Appellees respectfully request that:

1. This Court deny Defendant-Appellant Leave to Appeal the appellate court's determination that TCM is capable of being sued,
2. Grant Defendant-Appellant Leave to Appeal the appellate court's determination that TCM is a state agency or in the alternative peremptorily reverse the Court of Appeals decision that TCM is a state agency and remand to circuit court for further proceedings,
3. Should this Court determine that TCM is not an entity capable of being sued, then Plaintiff-Appellees would ask that this case be remanded to circuit court and consolidated with the Court of Claims case, since naming TCM as the Defendant is tantamount to naming the entities comprising TCM,
4. Plaintiff-Appellees would simply ask that this Court allow their case be heard on the merits, as TCM and the principle entities comprising TCM are on notice of the claim, have appeared in this matter, and would not be prejudiced by allowing the claim to go forth in whatever court is deemed appropriate, as they are not seeking dismissal on the merits.

December 7, 2007

Respectfully submitted,

  
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