

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

v

ARVINMERITOR, INC.,

Defendant.

Docket No. 07- 654 -CE

Honorable JOYCE DRAGANCHUK

Celeste R. Gill (P52484)
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

COMPLAINT

Plaintiff, Michigan Department of Environmental Quality (MDEQ), by its attorneys, Michael A. Cox, Attorney General of the State of Michigan, and Celeste R. Gill, Assistant Attorney General, says:

Nature of the Case

1. This is a civil action brought pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 *et seq.* The Plaintiff seeks to recover costs lawfully incurred by the State of Michigan in undertaking response activities at the former Rockwell International Corporation

Superfund Site (hereinafter "Site" or "Facility") located in Allegan, Allegan County, Michigan, pursuant to Section 20137(1)(b) of the NREPA, MCL 324.20137(1)(b). Plaintiff also seeks a declaratory judgment, pursuant to Section 20137(1)(d) of the NREPA, MCL 324.20137(1)(d), that Defendant is liable for all future response activity costs incurred by the State at the Facility.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.20137(1).

3. Venue is proper in this Court pursuant to MCL 324.20137(3).

Parties

4. The Plaintiff is the state agency mandated to protect and conserve the natural resources of the State in the interest of the health, safety and welfare of the people and as the successor to the Michigan Department of Natural Resources (MDNR) under Executive Order 1995-18, effective October 1, 1995. MCL 324.503; MCL 324.99903. The Plaintiff has primary responsibility for implementation and enforcement of Part 201 of the NREPA, MCL 324.20101 *et seq*, and is mandated to coordinate all response activities required under Part 201, MCL 324.20104, and Executive Order 1995-18.

5. Defendant, ArvinMeritor, Inc. (ArvinMeritor) is an Indiana Corporation authorized to do business in Michigan. Its principal place of business is at 2135 West Maple Road in Troy, Michigan.

6. The Defendant is a "person" within the meaning of Section 301(g) of the NREPA, MCL 324.301(g).

General Allegations

7. The Rockwell Site is located at 1 Glass Street in Allegan, Michigan.

8. Glass manufacturing operations began at the Site in the early 1900s. The machining and assembly of drive line parts began at the Site in approximately 1914. Standard Steel and Spring acquired the property in 1938 to manufacture drive line assemblies.

9. Rockwell International Corporation (Rockwell) became the owner of the Site in 1953 through a series of mergers involving Standard Steel and Spring and other companies, and continued the same manufacturing activities until the late-1980s. Site activities continued until 1996.

10. In October 1997 Rockwell's Automotive Division became Meritor Automotive, Inc. as a result of a corporate restructuring, and on July 7, 2000, Meritor and Arvin Industries, Inc. merged to form ArvinMeritor, Inc.

11. During the course of manufacturing operations the Defendant caused releases of hazardous substances into the soil and groundwater on the Site, some of which migrated off-site. From approximately 1964 to 1972, water soluble wastes were discharged into several unlined ponds at the facility. In 1972, Rockwell constructed a waste water treatment plant on site that discharged wastewater to a series of three ponds and then to the Kalamazoo River. The original unlined ponds were backfilled and built over.

12. In the early-1970s oil seepage was discovered adjacent to the three wastewater treatment ponds. In the mid-1970s further investigation indicated that two underground equalization tanks in the wastewater treatment plant were leaking.

13. In 1987, the United States Environmental Protection Agency (USEPA) placed the Site on the National Priority List of "Superfund" sites pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 USC § 9601 *et seq*, also known as the federal "Superfund" law.

14. USEPA served as the lead agency at the Site with the Plaintiff providing technical assistance, oversight, consultation, and review and comment on all deliverables as the support agency pursuant to a series of Superfund Cooperative Agreements.

15. In 1989, the Defendant initiated a Remedial Investigation and Feasibility Study (RI/FS) for soil and groundwater at the Site pursuant to a USEPA issued Administrative Order of Consent dated July 14, 1988.

16. The Defendant conducted Site investigation activities from 1990-1996 and submitted its draft RI reports to USEPA in 1990, 1993, 1997, and 1998.

17. USEPA rejected all of Defendant's draft RI reports as deficient and, by a Notice of Determination to Fund and Conduct a RI/FS at Rockwell International, USEPA took over the investigation of the Site in 1998.

18. USEPA conducted the field investigations that it believed were needed to complete Defendant's RI/FS and in February 2000, USEPA issued a draft RI report that documented areas of soil and groundwater contamination at the Site.

19. USEPA asked Plaintiff to review and comment on its draft RI and Plaintiff identified data gaps during its review.

20. In November 2000, with authorization from USEPA, Plaintiff began to investigate the identified data gaps which included defining the horizontal extent of previously identified areas of environmental concern and other areas of the Site not previously investigated.

21. USEPA requested and Plaintiff provided data from its sampling events during 2001.

22. The USEPA issued a revised RI report for the Site on or about July 17, 2001.

23. Plaintiff issued a report of its findings from the data gap investigation in an August 2001 document titled "Executive Summary, Data Gap Investigation, Former Rockwell International Site, Allegan, Michigan" and submitted its findings which also consisted of Technical Memoranda containing data and maps to USEPA in August 2001.

24. The Record of Decision (ROD) and a Unilateral Administrative Order for the Site was issued September 30, 2002 requiring the Defendant to perform the remedial design identified in the ROD to address the site, including areas first identified by the Plaintiff during its data gap investigation.

25. The State of Michigan has spent considerable public monies in investigating the extent of soil contamination on the Site, for which it has not been reimbursed despite previous demands for payment to the Defendant.

Count I

Recovery of Past Costs under NREPA

26. Paragraphs 1-25 are realleged and incorporated herein by reference.

27. Section 20126(1) of the NREPA, MCL 324.20126(1) provides in part:

(1) Notwithstanding any other provision or rule of law and except as provided in subsections (2), (3), (4), and (5) and section 20128, the following persons are liable under this part:

(a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.

(b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing a release or threat of release.

28. There have been "releases" or "threatened releases" of "hazardous substances" into the environment at the Site, within the meaning of Sections 20101(1)(bb), 20101(1)(ii), and 20101(1)(t) of the NREPA, MCL 324.20101(1)(bb), MCL 324.20101(1)(ii), and MCL 324.20101(1)(t).

29. The Rockwell Site is a "facility" as defined in Section 20101(1)(o) of the NREPA, MCL 324.20101(1)(o).

30. Defendant is the successor entity to Rockwell which "owned" or "operated" the Site and was responsible for an activity causing a release and is therefore the "owner" or "operator" of a facility.

31. Defendant is a person liable under Section 20126 of the NREPA, MCL 324.20126.

32. Sections 20126a(1) and (3), MCL 324.20126a(1) and (3), provide in part:

(1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

* * *

(3) The amounts recoverable in an action under this section shall include interest. This interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified in section 6013(5) of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.6013 of the Michigan Compiled Laws.

33. Releases of hazardous substances at the Site, for which the Defendant is liable, have caused Plaintiff to incur response activity costs, including the cost of investigating the extent of contamination at the Site and enforcement costs. Plaintiff has lawfully incurred response activity costs in excess of \$1,000,000.00. The MDEQ's most recent Cost Recovery Summary Report is attached as Exhibit 1.

34. Section 20137(1) of the NREPA, MCL 324.20137(1), provides in part:

(1) In addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

* * *

(b) Recovery of state response activity costs pursuant to section 20126a.

35. Plaintiff has lawfully incurred response activity costs arising from releases or the threat of releases at the Site including investigation and enforcement costs and may incur additional response activity costs.

36. Defendant is liable to the State for all response activity costs lawfully incurred by the State relating to the releases or threatened releases of hazardous substances at the Facility.

Count II
Declaratory Judgment

37. Paragraphs 1-36 are reincorporated herein by reference.

38. Section 20137(1)(d) provides:

(1) In addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

* * *

(d) A declaratory judgment on liability for future response costs and damages.

39. An actual, substantial legal controversy exists between Plaintiff and Defendant, and the Plaintiff is entitled to a judicial declaration of its rights and legal relations with regard to the Defendant. Pursuant to Sections 20126a and 20137(1)(d) of the NREPA, MCL 324.20126a and MCL 324.20137(1)(d), Plaintiff is entitled to a declaratory judgment that Defendant is liable to Plaintiff for future response activity costs incurred by Plaintiff in responding to the releases or threats of releases at the Facility.

40. A declaratory judgment for recovery of such response activity costs and damages is appropriate and in the public interest because it will prevent the need for multiple lawsuits as Plaintiff incurs future response costs and damages and will provide a final resolution of the issue of liability for response activity costs and damages.

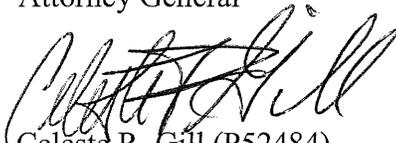
Prayer for Relief

Wherefore, the Plaintiff respectfully requests that this Court:

- A. Order the Defendant to pay the State for all response activity costs incurred as a result of response actions taken at the Site by the Plaintiff and the statutory prejudgment interest.
- B. Enter a declaratory judgment that Defendant is liable for and must reimburse Plaintiff for all future response activity costs lawfully incurred by the Plaintiff with regard to the Facility.
- C. Award Plaintiff its costs in this action, including but not limited to attorney's fees, MDEQ staff costs, and
- D. Award any further relief as the Court deems proper and just.

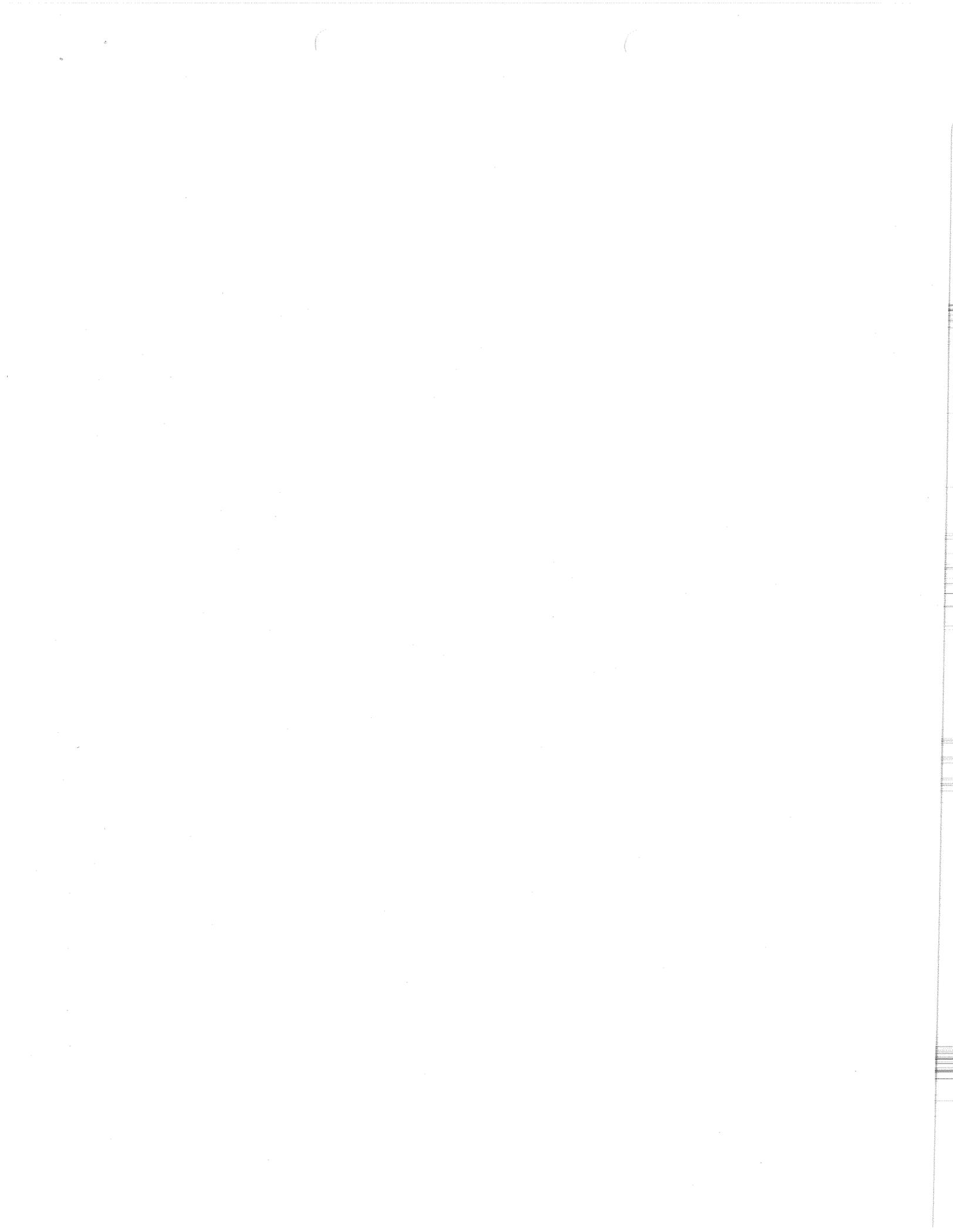
Respectfully submitted,

Michael A. Cox
Attorney General


Celeste R. Gill (P52484)
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

Date: May 21, 2007

S: NR/AC/cases/2005010036/ArvinMeritor/complaint



MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
 REMEDIATION AND REDEVELOPMENT DIVISION

Date: 02/16/2007
 Source: ERNIE
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Cost Recovery Summary Report - Combined

Site Name: Rockwell International Corp.

County: Allegan

Site ID: 03000030

Packages: 453234-00
 Interest

Rockwell International/Old Rockwell Bldg: Original, Update1, Update2, Update3,

455329-00

Rockwell Int/Old Rockwell Building: Original, Update1, Update2, Update3, Interest

Total for Employee Salaries and Wages		
Period Covered: 08/26/1995 - 01/13/2007	\$86,209.02	
Indirect Dollars	\$14,976.97	
Sub-Total		<u>\$101,185.99</u>
Total for Employee Travel Expenses		
Period Covered: 09/30/1995 - 06/15/2005		\$1,925.11
Contractual Expenses		
Mactec (Frmr Harding) (PM) (Y90387-M)		
Period Covered: 04/24/2000 - 11/05/2001	\$96,122.25	
Bio-Chem Environmental Analytical Labora (Y80241)		
Period Covered: 09/07/2000 - 11/05/2001	\$140,906.20	
Mactec (Frmr Harding) (PM) (Y00090-M)		
Period Covered: 01/31/2001 - 11/05/2001	\$410,006.05	
Mactec (Frmr Harding) (PM 2001) (Y01344-V)		
Period Covered: 02/19/2002 - 02/19/2002	\$1,582.30	
Mactec (Frmr Harding) (PM 2001) (Y02019-V)		
Period Covered: 02/19/2002 - 02/19/2002	\$4,467.43	
Trace Analytical Laboratories, Inc. (Y80243)		
Period Covered: 03/29/2002 - 04/12/2002	\$7,861.00	
Mactec (Frmr Harding ESE) (LOE -Fed) (P2000638)		
Period Covered: 04/24/2002 - 01/26/2007	\$222,789.28	
Contract Sub-Total		<u>\$883,734.51</u>
Total for Miscellaneous Expenses		
Period Covered: 06/28/2000 - 09/30/2006		\$639.43
MDNR/MDEQ Lab		
Period Covered: 12/07/1998 - 09/21/2000		\$9,162.82
Total for MDPH/Community Health Expenses		
Alternate Water Supply		
Period Covered:	\$0.00	
Bottled Water		
Period Covered:	\$0.00	
MDPH/MDCH Lab		
Period Covered:	\$0.00	
Sub-Total		<u>\$0.00</u>
Attorney General Expenses		
Period Covered: 04/01/2005 - 12/31/2006		\$15,086.25
Other Expenses		
Period Covered:		\$0.00
Sub-Total		<u>\$1,011,734.11</u>
Interest Calculated from 06/15/2004 through 01/31/2007		<u>\$297,911.46</u>

Cost Recovery Summary Report - Combined

Total Combined Expenses for Site and Interest

Run Date 02/16/2007

Date: 02/16/2007

Source: ERNIE

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\$1,309,645.57