A Summary of the Recent Case Law Regarding Whether FCA's POs are Requirements Contracts

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In the last year, several cases have addressed whether the terms of a contract between a supplier and buyer create a requirements contract. These cases begin with the *MSSC, Inc. v. Airboss Flexible Products Co* decision, and are currently at issue in the ongoing cases which Fiat Chrysler Automotive (FCA) has against KAMAX and MacLean-Fogg Component Solutions (MFCS), respectively. In both the *KAMAX* and *MFCS* cases, the supplier refused to supply FCA, arguing that they had no obligation to supply FCA under *MSSC*. In each case, FCA sued, asking the court to require the supplier to resume supply. Although both lawsuits were filed in the Oakland County Circuit Court, they were assigned to different judges. In *KAMAX* the supplier was ordered to resume shipping, while in *MFCS*, the supplier was not. Although neither of the cases definitively resolved whether FCA's terms create a requirements contract, they provide valuable insights into the current state of the law.

In mid-July of 2023, the Michigan Supreme Court issued the *MSSC, Inc. v. Airboss Flexible Products Co*, decision, which arose out of a pricing dispute between a Tier 1 (MSSC) and Tier 2 (Airboss) supplier. After a pricing dispute, Airboss refused to ship on the grounds that the supply contract was not a requirements contract, and thus it had no duty to continue supply. Subsequently, MSSC sued to force Airboss to resume shipments. Both the lower court and the Michigan Court of Appeals agreed with MSSC and ordered Airboss to continue to supply MSSC. However, the Michigan Supreme Court ultimately disagreed with the lower courts and held that the contract in question lacked a quantity term, and thus was not a requirements contract. Instead, it held that the contract was "a release by release" contract, and that the seller was obligated to fill accepted releases, but not accept or fill future releases. The parties' contract required MSSC to purchase the goods for which it

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issued releases, but it did not require it to issue any releases or to purchase its requirements. The purchase order (PO) was labeled a "blanket" PO, but the court held that the word "blanket" alone did not qualify as a quantity term. However, it is important to understand that *MSSC* does not call into question the enforceability of a properly drafted requirements contract, but rather only clarified what qualifies as an enforceable requirements contract.

Relying on *MSSC* and several subsequent cases, multiple suppliers involved in pricing disputes with FCA refused to ship, arguing that the FCA terms did not create a requirements contract. Specifically, under FCA's standard terms, which require FCA to purchase "approximately 65-100%" of its requirements. FCA then sued these suppliers, seeking to force them to resume supply. The first of these cases was *FCA v. KAMAX*.

KAMAX contended that because a "sufficient" quantity term was not established, a requirements contract was not created and, therefore, KAMAX was not obligated to maintain the original agreed upon pricing, as would be mandatory under a standard requirements contract. In contrast, FCA argued that a requirements contract was created as the "approximately 65-100%" language establishes a mathematical percentage, and that mathematical percentages may qualify as a "sufficient" quantity term. FCA maintained that, because the mathematical percentage in the agreement qualified as a "sufficient" quantity term, a requirements contract was indeed created and, therefore, KAMAX was obligated to maintain the original agreed upon pricing. Here, both parties relied on the *Airboss* case in their arguments. KAMAX argued that Airboss requires that an "exact" amount be stated, while FCA argued that the mathematical percentage listed in the PO qualifies as an exact amount, as it could be distilled into an integer once FCA determined how many parts it would require.

Ultimately, the Oakland County Circuit Court in ruled that KAMAX was obligated to continue supplying FCA at the agreed upon price. During a preliminary injunction hearing, the court stated that it was unable to determine which party was likely to prevail on the merits, but it held that FCA is more likely to suffer irreparable harm. The court reasoned that the consequences facing FCA, should KAMAX cease supplying parts, would go beyond monetary damages, citing loss of customer good will, which could devastate FCA's supply chain.

Shortly after *KAMAX*, the battle over quantity terms was again fought after a dispute arose between FCA and MFCS. The dispute arose in late 2023, after FCA denied MFCS's repeated requests for price increases due to dramatically increased costs resulting from inflation and other factors. Each of the 24 blanket POs between the parties identified the quantity of parts to be shipped as "approximately 65-100%" of FCA's requirements. Importantly, the POs also mandated that price would remain fixed. In early March of 2024, following unsuccessful commercial discussions, MFCS stated that it would no longer supply FCA with parts until FCA granted MFCS's desired price increase. In mid-March, after further negotiations between the parties failed, FCA accused MFCS of breach of contract for threatening to stop shipment. Subsequently, MFCS halted shipments to FCA, which caused FCA to shut down its plant. In early April, FCA agreed to issue a set of revised POs to grant price increases from January 1, 2024 to April 12. In mid-April, following FCA failing to secure a temporary restraining order that would require MFCS to ship parts at the original price, FCA agreed to the price increases under

protest, meaning that FCA could sue and attempt to recover the increased payments if a court later determined that the fixed price contract was enforceable. Subsequently, MFCS resumed shipping parts at its desired pricing, and the FCA plant reopened. Soon afterwards, FCA filed for a preliminary injunction, seeking to require MFCS to resume shipping parts at the original price, as opposed to the currently increased price.

In order for FCA to obtain a preliminary injunction, the court needed to address several issues, including: (1) whether FCA would suffer "irreparable harm" if MFCS was not ordered to resume supply, and (2) whether FCA would be likely to "prevail on the merits" should the case continue. These two issues are central to most automotive supply chain disruption cases. As to the irreparable harm issue, FCA principally argued that, unless MFCS continued supply, there would be plant shutdowns and other severe damages and that an award of money damages months or years down the road could not cure those harms. As to the merits issue, FCA argued that based on the prior Michigan Court of Appeals opinion in *Cadillac Rubber v. Tubular Metal,* the contract required MFCS to supply all of FCA's requirements at fixed prices. MFCS principally countered that FCA could avoid the asserted irreparable harm by paying the increased price under protest. Additionally, regarding the merits argument, MFCS contended that FCA's promise to purchase "approximately 65 to 100%" of its requirements did not create a legally enforceable requirements contract under last summer's Michigan Supreme Court decision *MSSC v. Airboss*, which, MFCS argued, was contrary to the *Cadillac Rubber* decision.

Following a hearing, the court denied the injunction sought by FCA, primarily because the court reasoned that FCA would be able to avoid the calamities it claimed simply by paying under protest. The court stated that "FCA's payment under protest will prevent any disruption to the supply chain or harm to FCA's goodwill" and that FCA's payment under protest would preserve the status quo without either party having been irreparably injured.

Although the court refused to order MFCS to resume shipments for lack of irreparable harm, it also tentatively, believing it was constrained by binding precedent, concluded that FCA likely would prevail on the merits under *Cadillac Rubber*. The *Cadillac Rubber* opinion held that a PO stating a quantity between 1-100 parts was sufficient to create an enforceable requirements contract. *Cadillac Rubber* is arguably irreconcilable with *MSSC v. Airboss*, which held that a contract must state a sufficiently precise quantity to be enforceable. Nevertheless, the Michigan Supreme Court in *Airboss* expressly declined to overrule *Cadillac Rubber* as that issue was not present in that case. However, in order to receive a more definitive answer on this recurring issue, it seems likely that suppliers will have to bring this issue before the Michigan Supreme Court, in order to have *Cadillac Rubber* overruled. However, since the Michigan Supreme Court has not done so yet, Judge Warren found himself hamstrung by *Cadillac Rubber*. In the words of Judge Warren (referencing Monty Python and the Holy Grail):

> Although MFCS argues that *Cadillac Rubber* is a bloody, limbless black knight that has been hacked and slashed to a stump by King *MSSC*, this Court cannot disregard it. Even if it has no legs to stand on, this Court must follow *Cadillac Rubber* as it remains the law of the fair land of Michigan until it is finally (if ever) completely vanquished by

> the juridical knights of the Michigan Supreme Court. Even as the stump shouts "It's just a flesh wound!" it is up to the Supreme Court to put Knight *Cadillac Rubber* out of its misery - or to restore it for battle.

Determinations regarding requirements contracts are critical. As suppliers continue to advocate for price relief based on the unprecedented cost increases they have experienced, this issue will continue to arise, and the possibility grows that the Michigan Supreme Court will need to address the lingering precedent of *Cadillac Rubber* in the near future. Butzel anticipates that some suppliers will continue to challenge the enforceability of FCA's "65 – 100%" quantity term, including, if necessary, petitioning the Michigan Supreme Court to formally overrule *Cadillac Rubber.* Certainly, a determination by the Michigan Supreme Court to overrule *Cadillac Rubber* or further provide a more concrete method of defining requirements contracts could take many months or even years. In the meantime, suppliers seeking price relief need to develop strategies in close consultation with their attorneys. Please feel free to contact the authors of this Client Alert or your Butzel attorney for more information.

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