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Federal Court Holds That FCA's Standard Quantity Term Does Not Create a Requirements Contract

Client Alert

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On Thursday, March 20, in the case of *FCA US, LLC v. MacLean-Fogg Component Solutions LLC*, ("Maclean-Fogg") a federal court in the Eastern District of Michigan held that FCA's standard quantity term did not create a requirements contract, but rather a "release-by-release contract," under which a supplier is obligated to fulfill only accepted releases and is free to reject new releases.

FCA's standard quantity term does not require its suppliers to provide 100% of FCA's requirements, it states FCA will purchase 65-100% of its requirements. The quantity term is of unique importance in automotive supply contracts because contracts for the sale of goods are not enforceable without a quantity term. A provision identifying a set share of a buyer's "requirements" is a quantity for this purpose. The central question in *Maclean-Fogg* is whether 65-100% is a sufficiently definite quantity needed to create a "requirements" contract.

This question is the subject of a long-standing controversy, which intensified following the Michigan Supreme Court's 2023 decision in *MSSC, Inc. v. Airboss Flexible Prod. Co.* and the Federal Court of Appeals' 2024 decision in *Higuchi Int'l Corp. v. Autoliv ASP, Inc.* Butzel issued Client Alerts addressing each of these cases, linked in the prior sentence, so this Alert will provide only a brief overview of those earlier cases.

With considerable oversimplification, the court in *MSSC* held that a contract in which the buyer did not promise to purchase its requirements from the seller was not a requirements contract but was instead a "release-by-release" contract which allows the seller to reject future releases. Following the ruling in *MSSC*, *Higuchi* held that a contract's quantity term must "clearly and precisely establish the set share of the requirements that the buyer must purchase." *Higuchi* is binding on federal courts in

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Michigan, including the court that issued the new decision, but not on state courts. Although seemingly a legal “technicality,” this is of considerable practical significance, including as to the court’s decision in *Maclean Fogg*.

Returning to the *Maclean-Fogg* decision, the court held that under *Higuchi*, “approximately 65%-100% of FCA’s requirements” is not a sufficient quantity term to create a requirements contract. The quantity term must “clearly and precisely establish the set share of buyer’s requirements.” A quantity term that is an approximation is not clear and precise.

The court also rejected FCA’s argument that the court should look to the parties’ “course of dealing,” that is, the fact that FCA had always purchased 100% of its requirements, because “a quantity term cannot be made clear through evidence beyond the written contract.”

The *MacLean-Fogg* decision is a significant victory for FCA’s suppliers. Moreover, although the decision is specific to FCA’s terms, it has implications for the terms of other buyers as well. However, several cautionary notes are in order. First, as noted above, this decision of a federal court is not binding on state courts and, for reasons beyond the scope of this Alert, many supply dispute claims cannot be brought in federal court. Second, there is a case, *FCA v. Kamax, Inc.*, raising the same question, that is pending in the Michigan Court of Appeals. Especially if *Kamax* reaches the Michigan Supreme Court, its outcome might either (a) supersede the *Maclean-Fogg* decision, if the Supreme Court agrees with FCA, or (b) confirm that all contracts governed by FCA terms are release-by-release contracts in both state and federal courts, if it agrees with *Kamax*. Third, FCA may attempt to fix the deficiency found in *Maclean-Fogg* by revising its quantity term, including language in an amended purchase order or, perhaps, even in a release. Therefore, we recommend closely monitoring FCA’s supplier portal and any amended purchase orders and releases and consulting with counsel regarding other steps to take to protect against such a modification. Fourth, there are a number of important practical and legal questions as to how a supplier should exercise its rights under a release-by-release contract. Finally, make sure that your own terms include an appropriate quantity provision. In light of these many issues and complexities, Butzel strongly urges every supplier to consult with experienced supply-chain counsel before making decisions on these topics.

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