

# CLIENT ALERTS

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## Federal Court of Appeals Interprets What is Required to Form an Enforceable Requirements Contract

### Client Alert

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There has been a flurry of recent cases interpreting what is required to form an enforceable requirements contract following the Michigan Supreme Court's decision last July in *MSSC v. Airboss*. Unfortunately for businesses looking for a clear guidance on the meaning of *Airboss*, different Courts have quite different understandings of the case. *Airboss* and the cases interpreting it have been discussed in a series of prior Butzel Client Alerts, which can be found [here](#), [here](#) and [here](#). A review of those prior Alerts provides some useful context for the discussion that follows.

On May 23rd, the federal Court of Appeals for the 6th Circuit, which is the court of appeals for cases in the Michigan federal courts, issued an opinion in *Higuchi Intl. v. Autoliv* that is quite favorable to sellers. Before explaining the holding, three technical legal points are helpful. First, the 6th Circuit decision is binding on federal courts in Michigan, unless and until the Michigan Supreme Court clarifies the meaning of *Airboss*. Second, it is not binding on Michigan state courts, although those state courts may consider federal decisions and they often do. Third, with some over-simplification, a supply chain dispute may be heard in a federal court only if it is between businesses from different states (or foreign jurisdictions) and more than \$75,000 is at stake. Conversely, if the dispute does not meet those criteria, it may only be heard in a Michigan state court.

In *Higuchi*, plaintiff Higuchi informed defendant Autoliv of its intent to stop supplying parts unless the parties were able to come to an agreement regarding a price increase. After the parties failed to do so, Higuchi filed suit seeking a declaration that they were no longer obligated to supply Autoliv because the parties' contract was not a requirements contract. Autoliv

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counterclaimed asserting that its contract with Higuchi was an enforceable requirements contract and asking the court for a preliminary injunction forcing Higuchi to continue shipping. The district court sided with Autoliv and granted it a preliminary injunction, which the Sixth Circuit has now reversed.

The relevant contract provision stated:

*"This blanket contract is issued to cover Autoliv ASP, Inc.'s requirements of the parts listed below [for the life of the program], ... for which the parts listed herein are used. Deliveries shall be made only in the quantities and at the time specified in such requirements. Autoliv ASP, Inc. shall reserve the right to change, from time-to-time, the quantities specified in any part requirement. In such event Autoliv ASP, Inc. shall be under no obligation to [Higuchi] unless the delivery or fabrication of such parts or the acquisition of such raw materials was specifically authorized in a Release delivered to [Higuchi] from Autoliv ASP, Inc[.]"*

The central issue before the 6th Circuit was whether the words "cover [buyer's] requirements" were sufficient to create a requirements contract under *Airboss*. The Court held that it did not because:

*"issued to cover Autoliv ASP, Inc.'s requirements" ... does not unambiguously obligate Autoliv to purchase its requirements from Higuchi, let alone precisely state the specific share of requirements at issue. ... It does not plainly state that Autoliv will buy a specific percentage of its requirements, "all" of its requirements, or any equivalent language, from Higuchi."*

Autoliv argued that the language, together with its longstanding practice of purchasing all of its requirements from Higuchi, was sufficient to form a requirements contract. The Sixth Circuit disagreed, explaining that under *Airboss* (and Michigan's statute of frauds) evidence of the parties' actual performance did not matter, because:

*"unlike other terms of a contract, a quantity term cannot be made clear through evidence beyond the written contract. ... The quantity term, on its face and as written, must therefore be clear and precise"*

To meet that standard and create an enforceable requirements contract, the court ruled that the quantity terms should "dictate that the buyer will obtain a set share of its total need from the seller (such as 'all requirements of the buyer')." Here, the court reasoned that because the agreement between the parties "does not plainly state that Autoliv will buy a specific percentage of its requirements, 'all' of its requirements, or any equivalent language," then no quantity term was stated, so the agreement does not satisfy the statute of frauds. According to the Court, the word "requirements" is not enough, because it "does not unambiguously obligate Autoliv to purchase its requirements from Higuchi, let alone precisely state the specific share of requirements at issue."

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The Court therefore reversed and remanded this case to the district court, finding that the injunction was not warranted, principally because the parties had formed a release-by-release agreement which “gives both parties the freedom to allow their contractual obligations to expire [ ] by either not issuing or not accepting a new release for specific quantities of goods without establishing any long-term obligations to buy or sell parts from one another.”

*Higuchi* is an important case, probably the most important of the cases interpreting *Airboss*. At the same time, *Higuchi* does not resolve every question. The elements of an enforceable requirements contract in Michigan remain fraught with uncertainty. Thus, Butzel strongly urges that business decisions which are tied to the meaning of *Airboss* only be made after consultation with experienced counsel. In addition, since *Airboss* was decided, Butzel has emphasized the importance to both sellers and buyers of reviewing their contract portfolio to assess the risks and opportunities that *Airboss* and the cases interpreting it present. *Higuchi* makes that task even more important.

Please feel free to contact the authors of this Client Alert or your Butzel attorney for more information.

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