

# CLIENT ALERTS

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## New Michigan Supreme Court Case Means it's Time for a Review of Your Supply Chain Contract Portfolio

### Client Alert

7.13.2023

On July 11, 2023, the Michigan Supreme Court issued a landmark decision, *MSSC, Inc. v. Airboss Flexible Products Co.*, that is of special importance to automotive supply contracting. The decision calls into question the enforceability of a type of contract that is common in the automotive industry. This creates new risks for buyers using that type of contract and creates new opportunities for sellers that are subject to those contracts.

MSSC was a Tier-1 automotive supplier and Airboss a Tier-2. The parties' purchase order was labeled a "blanket order," but did not contain any specific quantities. The terms and conditions required MSSC to purchase the goods for which it issued releases, but it did not require it to issue any releases.

When a pricing dispute arose, Airboss informed MSSC that it would refuse to accept or fill any further releases unless the pricing dispute was resolved. MSSC sued for breach of contract. The lower court agreed with MSSC, first entering a preliminary injunction requiring Airboss to continue to supply at the old price and eventually granting MSSC summary disposition. The Michigan Court of Appeals agreed, holding that the contract was enforceable.

The Supreme Court disagreed, holding that under this type of contract, which the Supreme Court labeled "a release by release" contract, the seller was obligated to fill accepted releases, but not to accept or fill future releases. Therefore, Airboss did not breach the contract by refusing to fill MSSC's new releases.

The decision was rooted in two related provisions of Article 2 of the Uniform Commercial Code (UCC), which governs contracts for the sale of goods. First, under the UCC statute of frauds (UCC

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2-201), a contract is enforceable only to the extent of the written quantity. In other words, a contract that has no written quantity is unenforceable and a contract for 10 units is enforceable only for those 10 units. Second, under UCC 2-306, a promise to purchase the buyer's requirements counts as a quantity, thus satisfying the statute of frauds and making requirements contracts, the contractual bedrock of the automotive supply chain, enforceable.

The Supreme Court held MSSC's contract was not a requirements contract and did not satisfy the statute of frauds, beyond the quantity contained in written releases. It explained that the word "blanket" alone was not a quantity. It further explained that a promise to purchase the quantities for which the buyer issued releases, but not to issue releases for its requirements, was not a requirements contract, so was instead enforceable only for the quantities in accepted releases. Thus, the Court concluded, Airboss had the right to refuse to accept or fill new releases.

MSSC does not call into question the enforceability of a properly drafted requirements contract, it only clarified what was required for it to be enforceable. And most contracts in the industry are properly drafted and enforceable. But in Butzel's experience "release by release" contracts are not uncommon, and for those contracts, MSSC matters a great deal.

Butzel strongly recommends that in the wake of MSSC, both buyers and sellers should carefully review their contract portfolios to identify the new risks and opportunities MSSC creates. Butzel's Automotive team has decades of experience in supply chain contracting and stands ready to assist you in that evaluation.

**Sheldon Klein**

248.258.1414

klein@butzel.com

**Cynthia Haffey**

313.983.7434

haffey@butzel.com

**Daniel Rustmann**

313.225.7067

rustmann@butzel.com