



## The Seller Breached the Contract but the Purchaser Saved Money as a Result

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In the automotive world, this scenario is not too uncommon:

A supplier in a "just-in-time" inventory arrangement (these contracts involve purchasers of automotive parts who consistently maintain an inventory for merely a few days or weeks, while filling a contract requiring a continuous supply of parts) finds itself in a time-sensitive problem. It faces a sudden need for parts after a supplier that promised to deliver them on time, fell through. Faced with the untenable prospect of being short-handed for essential component parts, the supplier immediately seeks the parts from a new supplier, at a higher cost. In most instances, it then can sue the part supplier who caused the problem for the added cost.

But what if the scenario changed to the **advantage** of the company in this just-in-time arrangement - - let's assume first the company with the immediate need for parts manages to find a company that can sell for **less** than the company that caused the problem failing to deliver. What then?

This article discusses the unique situation when the purchaser actually **benefits** from the past seller's breach - - and the potential legal consequences that might surprise you.

### **THE PURCHASER'S NEED TO "COVER"**

In the scenario above, the past purchaser was in need of parts very quickly and was faced with a seller that breached by not delivering them. The purchaser, needing the parts quickly, was forced to find conforming parts from a new supplier. That process, in the eyes of the law, is called "cover," and Uniform Commercial Code (Sections 2-711 and 2-712) could actually allow the purchaser to **sue** the seller for its breach of contract. In fact, the purchaser could potentially recover:

- The difference in price (the extra expenses) between the original contract price and the cost under the new contract price for the conforming parts; and

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- “Incidental and consequential damages” resulting from the supplier’s breach, such as transportation expenses, inspection expenses, and any loss resulting from requirement needs that the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover (loss of business)

These damages are often referred to as “cover damages.”

### **WHAT HAPPENS WHEN THE PURCHASER PAYS FOR THE REPLACEMENT GOODS AT A LOWER COST?**

When the purchaser is able to find replacement goods at a lower cost, the law does not allow the purchaser to seek cover damages. Instead, pursuant to the Uniform Commercial Code Section 2-711, the law allows the purchaser to receive the return of its money it paid to the original supplier under the original contract price, plus incidental and consequential damages.

### **THE SELLER’S ARGUMENTS**

Buyers - even those that saved money from the seller’s breach – have occasionally sued the sellers who caused the problem, seeking money based on the law described above. Do they win? Sometimes they do.

In a case several years ago, a seller argued in defense of a buyer’s claims that it was entitled, at a minimum, to a set-off equivalent to the benefit the buyer received from the new supplier’s lower pricing. A set-off equivalent would have allowed the seller to only pay the buyer the amount the buyer paid for the substitute goods while keeping any amount that remained from the buyer’s original purchase. The court **denied** the offset, and stated the following:

Where the cost of cover is less than the contract price, and the buyer recovers the purchase price pursuant to Section 2-711, the buyer sustains no damages in covering. [Defendant] cites no authority for the proposition that a breaching seller is entitled to retain a portion of the purchase price upon a buyer’s proper rejection and return of defective goods in the event that the buyer covers its resale contract at a lower price than it paid to the breaching seller. In such a situation the aggrieved buyer sustains no cover damages as a consequence of the seller’s breach and the seller’s liability is limited to the purchase price paid as a matter of clear statutory mandate.

The case is: *Allied Semi-Conductors International, Ltd v Pulsar Components International, Inc.*

### **CONCLUSION**

As unusual as it may seem for a purchaser to find conforming replacement parts on short notice **at lower cost than the original contract price**, these scenarios are possible. The law allows aggrieved buyers several options. And the law sometimes holds protections for buyers who hardly seem to be “aggrieved.”

If you have questions about your rights and responsibilities in contractual arrangements, no matter how simple or complex, please contact Ray Littleton at 248.539.9903.