

New Michigan Supreme Court Ruling: A Must-Read for All Automotive and Manufacturing Companies

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Many "blanket" supply agreements in the automotive and other industries provide that the buyer will specify the quantity to be delivered only by issuing periodic "releases." On July 11, the Michigan Supreme Court held for the first time that such a "release-by-release" contract is not enforceable beyond the quantity specified in issued releases, and therefore can be terminated by either party.

In *MSSC, Inc. v. AirBoss Flexible Products Co.*, the Court interpreted the statute of frauds provision in Uniform Commercial Code Section 2-201(1), MCL 440.2201(1), which provides that a contract for the sale of goods for more than \$1,000 must be in writing, and such a "contract is not enforceable beyond the quantity of goods shown in the writing." The Court noted that while the statute of frauds is satisfied only if the contract specifies the quantity of goods to be purchased, MCL 440.2306(1) provides for contracts that measure quantity by either the "output" of the supplier or the "requirements" of the buyer, and both types of contracts satisfy the statute of frauds.

In *MSSC*, the Court considered a third type of contract a "blanket" purchase order that states the quantity will be specified only in "releases" to be issued later but does not obligate the purchaser to order any specific quantity. The Court in *MSSC* held that absent language sufficient to create either an "output" contract or a "requirements" contract, such a "release-to-release" contract does not satisfy the statute of frauds, and does not obligate the supplier to issue or the supplier to accept future releases.

MSSC arose out of what has become a familiar pricing dispute. When AirBoss refused to continue supplying MSSC with parts at a price set out in a blanket purchase order, MSSC sued. MSSC sought an emergency injunction to force AirBoss to continue to supply for the life of the program at the prices set forth in the blanket purchase order. The trial court held that although neither the purchase order nor MSSC's terms and conditions expressly required MSSC to purchase any quantity of parts, the purchase order nevertheless constituted a requirements contract because it contained the word "blanket" and extrinsic evidence indicated it was to last for the "life of the program." The trial court granted a preliminary injunction and summary disposition in favor of MSSC.

In a published decision, the Court of Appeals agreed with the trial court, holding that a purchase order with the word "blanket" on its face — but without any other quantity — was an enforceable requirements contract. The Court of Appeals relied on its earlier decisions from 1986 and 2020.

The Michigan Supreme Court reversed. The Court began its analysis by noting that a quantity is the only essential term required by the UCC's statute of frauds. The Court recognized that the quantity requirement was met by output and requirement contracts, but held that the term "blanket" in MSSC's purchase order did not obligate MSSC to purchase any specific quantity or portion of its requirements, and that the existence of a quantity term could not be established by extrinsic evidence. The Court concluded that MSSC's blanket purchase order was unenforceable and AirBoss was free to stop accepting releases at any time. The Court reversed the 1986 Court of Appeals decision relied on by the lower courts and distinguished the 2020 decision.

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The Michigan Supreme Court decision will no doubt affect certain contracts in the automotive and manufacturing industries. There are some immediate takeaways from the decision:

1. Buyers and suppliers should immediately review their existing contracts governed by Michigan law to determine whether they satisfy the UCC statute of frauds under the *MSSC* decision.
2. In particular, the *MSSC* decision renders the "blanket" purchase order language that has been used by some Tier 1 and Tier 2 automotive suppliers unenforceable beyond the releases actually issued and accepted.
3. Because there are few published decisions addressing this issue, the *MSSC* decision will likely be relied on by courts outside of Michigan, and therefore companies with contracts governed by law of other states should also evaluate the effect of the decision.

If you would like to read the Michigan Supreme Court's opinion, please [click here](#).

Robert Murkowski and A. Michael Palizzi help lead Miller Canfield's **Automotive Team**. Miller Canfield stands ready to assist clients in assessing their current contracts and terms to address this significant change to Michigan law. Please contact the authors of this alert or your Miller Canfield attorney to discuss this issue further.