

Michigan Supreme Court Clarifies Supplier Contracts

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Through its newly issued Opinion and Order in the case of *ACEMCO Incorporated v Ryerson Tull Coil Processing* (Michigan Supreme Court September 26, 2008), the Michigan Supreme Court has provided useful guidance to Michigan automotive parts suppliers in drafting raw material supply contracts and automotive parts contracts. Now, if a Michigan company wishes to purchase raw materials or parts, the company can make use of a "fixed quantity range contract" to account for market fluctuations.

Under Michigan's Statute of Frauds, all contracts for the sale of goods (i.e., raw materials, steel, plastic, parts, etc.) whose value exceeds \$1,000.00 are enforceable only when they are (a) in writing, (b) signed by the party against whom enforcement is sought, and (c) state a "quantity" of product to be purchased. Automotive industry contracts have traditionally sought to avoid a commitment to a specific numerical quantity in order to allow material and/or parts' purchasers flexibility in their ordering patterns to account for upturns and downturns in the automotive industry. However, over the past four years, both Michigan courts and courts from other states have relied on the Michigan Court of Appeals' unpublished decisions in *Olympic Lafayette Steel v ACEMCO, Incorporated* ("*Olympic*") and the lower court opinion in *Ryerson*, which concluded that the "quantity" stated in the contract was held to a very high threshold of specificity in order to be enforceable.

Under the rigid application of the Statute of Frauds' "quantity" requirement set forth in the *Olympic* and *Ryerson* decisions, the validity and enforceability of many automotive industry contracts which included such flexibility had been seriously called into question. Specifically, based on the Court of Appeals' unpublished decisions in *Olympic* and *Ryerson*, the court concluded that the Statute of Frauds' quantity requirement is only satisfied if a party expressly commits to (1) a specific numerical quantity (e.g., 50,000 parts or 50,000 lbs of steel) or (2) an exclusive requirements' contract.

In response to these serious questions about the enforceability of these types of automotive industry contracts, the Supreme Court in *ACEMCO, Incorporated v Ryerson Tull Coil Processing* examined whether the Court of Appeals' rigid application of the "quantity" requirement was proper.

In the *Ryerson* case, ACEMCO, an automotive parts' manufacturer, and Ryerson, a steel processor, entered into a signed steel supply agreement under which the parties agreed that Ryerson would provide ACEMCO with a total volume of steel of "33,950,000 pounds plus or minus 20%." This range language was put in the contract in order to provide ACEMCO with some flexibility to account for market upturns/downturns in the auto industry. After steel prices rose dramatically, Ryerson asserted that the parties did not have an enforceable contract because the quantity term was not specific enough and refused to supply any more steel to ACEMCO. As a result, ACEMCO filed suit.

At the trial court level, Ryerson argued that the contract was unenforceable because the statement of quantity used in the contract was an insufficient statement of quantity for Statute of Frauds' purposes. After the trial court concluded that the quantity range used in the contract was a sufficient statement of quantity, Ryerson filed an appeal of this decision with the Michigan Court of Appeals where it again asserted that the quantity range set forth in the agreement (i.e., 33,950,000 pounds +/- 20%) was an insufficient commitment to quantity under the Statute of Frauds. The Court of Appeals in *Ryerson* agreed with the steel supplier and concluded that the range language set forth in the contract in *Ryerson* did not state a sufficient enough quantity to satisfy the Statute of Frauds. As a result, the Court of Appeals

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concluded that the agreement was invalid and unenforceable. ACEMCO filed an appeal with the Michigan Supreme Court.

In its newly issued Opinion and Order, the Michigan Supreme Court agreed with ACEMCO's assertion that the range language utilized in the Steel Supply Agreement satisfied the quantity requirement of the Statute of Frauds, concluding that the fixed range language used in the agreement "unambiguously provides a quantity term" sufficient to satisfy the Statute of Frauds. In light of this *Ryerson* decision, then, the Michigan Supreme Court has expressly approved quantity range contracts as setting forth a sufficient quantity for purposes of Michigan's version of the U.C.C.

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