



## Notable Shift in Contract Law Regarding Release Contracts Could Affect Automotive Suppliers and Others

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The Michigan Supreme Court just issued a decision which may impact decades-long customs and practices in many industries—including the auto industry—with respect to “release contracts” associated with part purchases. Because many of these types of release contracts did not include a specific quantity of parts (or otherwise identify the contract as a “requirements” contract) at the time of contracting, instead deferring to a common practice of issuing “releases” in the future, Michigan’s Supreme Court ruled that the agreement did not obligate the seller to supply the necessary parts on an ongoing basis. Instead, if the seller chose to accept the “release”, a contract was formed and the relevant terms and conditions would apply. The practical effect of this is that the seller could refuse to provide the necessary parts under the pre-determined pricing and contractual arrangements. This ruling can upend decades-long supply chains if the relevant agreements do not comport with this new ruling.

In a recent case, the Michigan Supreme Court provided a critical differentiation between a requirements contract and what they referred to as a “release-by-release contract.” This case, *MSSC, Inc. v. Airboss Flexible Products Co.*, has effectively established a quasi-new class of contracts, furthering the complexity and depth of contract law.

The parties to the case were MSSC, Inc., a Tier-1 supplier, and Airboss Flexible Products Co., a Tier-2 supplier. Since at least 2013, MSSC contracted with Airboss to supply parts with an agreement that quantities of parts, and their shipping dates, would be set forth in a separate “Vendor Release and Shipping Schedule.” As such, at the time of contracting, there was no explicit quantity or method to determine it within the four corners of the documents.

While the relationship worked for many years, a dispute arose and Airboss refused to fulfill releases. MSSC sued for anticipatory breach of contract based on the refusal.

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The core of the issue was whether the “quantity” requirement was satisfied under Michigan’s enactment of the Uniform Commercial Code and the requirements under the Statute of Frauds (which requires certain contracts to be in writing to be enforceable). Michigan’s Supreme Court held that a “release” contract does not establish an obligation to perform beyond the duration of each specific release. Under such contracts, the parties essentially agree to terms and conditions for possible future transactions, but they are under no obligation to continue the contract beyond each agreed-upon release.

The Supreme Court distinguished these “release” contracts from a “requirements” contract. In a requirements contract, the buyer agrees to purchase all the parts they “require”. This type of contract satisfies the Statute of Frauds because there is a reference to a quantity even if that quantity is to be determined later. Said another way, both parties are obligated under a requirements contract as the buyer has to buy all the parts they need and the seller has to supply them.

This decision by the Court to distinguish these two contract types based on the presence of a quantity term marks a notable shift in contract law. The Court has laid down a clear primary difference, but the fallout of this verdict will undoubtedly have extensive reach and will likely unfurl over the coming years. The concept of release-by-release contracts, as distinguished from requirements contracts, adds a new dimension to contractual relationships, particularly in supply chain contracts and agreements with fluctuating demands.

Moreover, the case has significant implications for future contract drafting. It will likely prompt businesses to be more explicit in defining the nature of their contracts, particularly concerning the quantity term. This shift could lead to more precise and detailed contractual agreements and possibly a more robust body of law surrounding these two types of contracts. Ultimately, as the implications of this landmark decision continue to unfold, it will undoubtedly shape the landscape of contractual law for years to come.

If you have concerns about how your organization will have to structure its contracts moving forward, contact Rob Hamor at 248.785.4737 or at rhamor@fosterswift.com.