

Bodman PLC

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Michigan Supreme Court Overrules Court of Appeals Decision in *MSSC, Inc. v. Airboss Flexible Products Co.*

We write to alert you to a recent development on one of the topics discussed at the Bodman/Kharon/Miller & Chevalier Executive Briefing on Emerging Legal and Regulatory Issues Facing Automotive Companies that took place on May 23, 2023: the *MSSC, Inc v. Airboss Flexible Products Co.* decision. In that case, the Michigan Court of Appeals affirmed a trial court's ruling that "blanket," as used in "blanket purchase order," could be a quantity term and could indicate that the parties intended to enter into a requirements contract. Last week, the Michigan Supreme Court overruled the Court of Appeals' decision.

The Supreme Court summarized that under the UCC's statute of frauds, contracts that exceed \$1,000 in value are enforceable only if they include a quantity term. Enforceable longer-term contracts (i.e., purchases other than a spot-buy) can be requirements contracts or "release-by-release" contracts. In a requirements contract, the customer obligates itself to purchase some portion of its requirements for the goods in question, which qualifies as a quantity term. In release-by-release contracts, a term the Supreme Court adopted in this opinion, nothing in the purchase order purports to define the quantity the customer must buy or the supplier must provide. Releases sent after the purchase order provide the quantities. Thus, a release-by-release contract is enforceable only to the extent of issued and accepted releases.

The Supreme Court ruled that the trial court and the Court of Appeals erred when they relied on parole evidence to determine whether the parties intended "blanket" to designate some quantity and to clarify what quantity was intended. A review of Michigan case law confirmed that parole evidence could not supply the quantity term. The contract must contain language that clearly attempts to identify a quantity (e.g., "all wood sawable"). Parole evidence may be used only to clarify the quantity the existing language meant to define; parole evidence cannot be used to identify a quantity term. (To this extent, the Supreme Court also overruled the Court of Appeals' decision in *Great Northern Packaging, Inc v Gen Tire & Rubber Co*, 154 Mich App 777 (1986).)

In this case, Airboss was permitted to reject future releases from MSSC because nothing in MSSC's blanket purchase order provided a quantity term. Even though MSSC's blanket purchase order was "valid and binding on seller for the lifetime of the program or until

terminated pursuant to MSSC's Terms and Conditions," it was not a requirements contract because MSSC had not committed to purchase a specific percentage of its requirements (or any other quantity) except in its releases.

At our briefing, Bodman expressed its belief that the Court of Appeals' decision in *Airboss* was wrongly decided. The Supreme Court has confirmed that analysis. This decision comports with our discussion as to the commonly understood meaning of "blanket purchase order" in the industry and on strategies for obtaining relief from purchase orders.

If you have any questions about this decision or other topics discussed during the briefing, please reach out to any member of the panel. Below is contact information for the panel members who discussed supplier contracts.

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Bodman may not be able to respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.