IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS
(M.J. Kelly, P.J., and Swartzle and Ackerman, JJ.)

FCA US LLC,

*Plaintiff/Counterdefendant-Appellee*,

v.

KAMAX, INC.,

*Defendant/Counterplaintiff-Appellant*,

and

KAMAX MEXICO S. DE. R.L. DE. C. V.,

*Defendant*.

Docket No. 168680

Court of Appeals No. 371324

Oakland County Circuit Court
LC No. 2024-205863-CB
Hon. Victoria Valentine.

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# AMICUS CURIAE BRIEF OF MAGNA INTERNATIONAL, INC., AND DETROIT DIESEL CORPORATION

**ORAL ARGUMENT REQUESTED**

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## STATEMENT OF INTEREST[1]

*Amici curiae* are Tier-1 automotive suppliers. Magna International, Inc., ("Magna") is one of the world's largest Tier-1 automotive suppliers. Magna employs over 166,000 people and its global network, spanning 28 countries, includes 342 manufacturing operations and 103 product development, engineering, and sales centers. Magna employs a systems approach to design, engineering, and manufacturing that touches nearly every aspect of the vehicle. For example, Magna's divisions produce, among other things, body and chassis systems, powertrains, exterior systems, electronics, seating systems, mechatronic systems, mirrors, battery enclosures, control modules, and lighting systems. Magna supplies its systems to original equipment manufacturers ("OEMs") like General Motors Company, Ford Motor Company, and Stellantis. Magna contracts with thousands of Tier-2 and lower tier suppliers to supply parts for its systems.

Detroit Diesel Corporation ("DDC") is a subsidiary of Daimler Truck North America, LLC ("DTNA) and a Tier-1 supplier of integrated powertrain and vehicle systems for the heavy-and medium-duty, on-highway, and vocational truck markets. DDC designs and manufactures engines, transmissions, axles, and safety systems, supplied primarily for use in DTNA brands such as Freightliner and Western Star. Like other Tier-1 suppliers, DDC sources components from a broad network of Tier-2 and lower-tier suppliers.

Like many Tier-1 suppliers, Magna and DDC's agreements with Tier-2 suppliers include quantity terms that allow flexibility to accommodate their ability to have multiple suppliers for one part. As is most relevant here, Magna and DDC commonly contract with lower-tier suppliers to buy between one part and 100% of their needs, consistent with industry practice. In fact,

[1] No counsel for a party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

suppliers at every level of the supply chain widely use the same or similarly flexible quantity terms in their contracts.

Kamax, Inc., asks this Court to invalidate flexible quantity terms, thereby rendering thousands of previously agreed-upon automotive-supply contracts unenforceable the moment this Court issues its opinion. If Kamax succeeds, all these contracts will be subject to renegotiation at once. This would be unprecedented and would threaten the continuity of the automotive supply chain, which could send shockwaves through Michigan's economy. Given this threat, Magna, DDC, and many other auto suppliers have an interest in this Court's consideration of this appeal.

## ARGUMENT

Kamax is willing to tear down the automotive supply chain to escape a contract that it freely executed but now dislikes. Regardless of how much legal veneer Kamax places on its argument, its entire position is a means to an end.[2] This case, like other recent automotive supply disputes that involve challenges to a requirements contract's quantity term, does not involve any *bona fide* confusion about the quantity of parts that the supplier is meant to provide to the buyer. It is, in reality, a price dispute. The only reason that the sufficiency of the quantity term is at issue is because Kamax, like other similarly-situated suppliers, has seized upon the argument *du jour* to try to invalidate its contract and obtain a new, more favorable price, instead of using the remedies that Michigan law provides for price disputes (e.g., commercial impracticability or *force majeure*).

This Court has an obligation to ensure that Michigan's jurisprudence works properly for *everyone*, not just a subset of automotive suppliers who want to rewrite the rules for their own

[2] As one commentator conceded when discussing suits attacking the quantity term, "[s]uppliers don't care if they have a requirements contract; they want to know if they can exit an unprofitable deal or get a price increase[.]" Dan Sharkey LinkedIn Post, Ex. A.

benefit, at the expense of their business partners' settled expectations, thousands of employees and millions of consumers. To avoid the instability that adoption of Kamax's argument would bring, this Court must adopt the principles of *Cadillac Rubber & Plastics, Inc v Tubular Metal Systems, LLC*, 331 Mich App 416; 952 NW2d 576 (2020). Magna and DDC will not repeat all the sound legal underpinnings for this rule, which FCA US LLC and the Alliance for Automotive Innovation ably recount. Rather, this Brief illustrates the practical realities of the automotive supply chain, which require a flexible rule like *Cadillac Rubber*. Conversely, adopting Kamax's rigid rule will needlessly result in invalidating thousands of contracts that are working perfectly well for all parties, which could devastate the automotive industry and have a lasting negative effect on Michigan's economy.

## I. THE UNDERLYING DISPUTES CONCERN PRICE, NOT QUANTITY, AND MICHIGAN LAW SUFFICIENTLY PROTECTS SUPPLIERS WHO HAVE AGREED TO A FLEXIBLE QUANTITY TERM.

Recent automotive-supply chain disputes seeking to invalidate the quantity term of a requirements contract boil down to one issue: the supplier wants to increase the price before the end of the contract. In the automotive industry, each segment of the supply chain (i.e., OEM to Tier-1, and Tier-1 to Tier-2) generally engages in a competitive bidding process and enters a supply contract that designates a fixed price-per-part that is meant to last for the duration of the OEM's years-long program. Suppliers enter these relationships voluntarily and recognize that they are committing to meeting their customer's orders at the agreed upon price for the life of the automotive program. The predictability afforded by this interrelated structure of long-term, fixed-price contracts is necessary to accommodate the just-in-time nature of the industry, which is initiated from the top down by the OEMs. The fixed price nature of the contracts flowing down the supply chain also allows the OEMs to offer predictable and stable prices to consumers.

Notwithstanding these fixed-prices, however, buyers throughout the supply chain will sometimes accommodate hardships by renegotiating pricing when it is justified, perhaps by certain macroeconomic trends or supply-chain disruptions. When that occurs, those buyers often in turn must seek relief from their customers and a potential cost increase may merely be shifted from one level of the chain to the next, including ultimately to consumers. The automotive supply chain is a complicated ecosphere that greatly benefits from maintaining price stability whenever possible.

However, suppliers will sometimes leverage their position and the just-in-time nature of the supply chain to unilaterally force a renegotiation by threatening to stop shipping parts unless the buyer capitulates to a price increase. "[S]uppliers often have enormous short-term leverage" because the buyer "relies on a continuous and uninterrupted flow of parts and therefore cannot usually respond to a supplier's demand by immediately switching to a new supplier." Sharkey & Warner, *Exclusivity and Requirements Contracts: Michigan's Muddled Law, the Majority Rule of Other States, and their Impact on Automotive Suppliers*, 32 Mich Bus L J 44 (Spring 2012) ("Sharkey Article").[3] "[B]uyers that want to re-source a part must identify and qualify the new supplier, obtain possession of the tooling used to make the parts, move the tooling to the new supplier, have sample parts manufactured, and submit the parts for approval. That process can take weeks or months," during which time the buyer's supply is in jeopardy. *Id.* "A single supplier's refusal to ship parts can have a cascading adverse effect on the entire supply chain, and

[3] As reflected in its title, the crux of the Sharkey Article is that Michigan law in 2012 was "muddled" as to whether requirements contracts had to be exclusive. In 2020, the Michigan Court of Appeals held that requirements contracts do not need to be exclusive, and this Court adopted that conclusion in 2023. *Cadillac Rubber*, 331 Mich App at 426; *MSSC v Airboss Flexible Products Co*, 511 Mich 176, 194; 999 NW2d 335 (2023). Thus, Michigan law is no longer muddled on this issue.

shut down an entire vehicle assembly operation in a few days . . . . [E]ven a mom-and-pop stamper can threaten to quickly wreak havoc on an entire vehicle platform's production." *Id.*

A supplier's stop-shipment threat therefore often leads to litigation, where the buyer seeks to enforce the agreement and the supplier seeks to obtain a price increase by invalidating the agreed-upon contract. Rather than relying upon the appropriate legal doctrines justifying a remedy of price relief, such as *force majeure* or commercial impracticability, suppliers' go-to argument is that the quantity term is insufficient to establish a valid requirements contract—even though the only true disagreement between the parties relates to **price**, not **quantity**.[4] This is the circumstance in virtually every decision that this Court will consider in this matter. See *Airboss*, 511 Mich at 187-88 (lawsuit arose when "Airboss sought to pass the price increases onto MSSC."); *Higuchi Int'l Corp v Autoliv ASP, Inc*, 103 F4th 400, 403 (CA 6, 2024) (lawsuit arose when the supplier threatened "to stop selling automotive parts to [the buyer] unless [the buyer] agreed to increased prices."); *Dieomatic, Inc v General Aluminum Mfg, LLC*, Case No. 23-522, 2023 WL 5804426, at *1 (WD Mich Aug 3, 2023) ("GAMCO informed CCMI that it would be increasing the price per part . . ."); *Tower Auto Operations USA I, LLC v Vari-Form Mfg Inc*, Case No. 24-10144, 2024 WL 245529, at *1 (ED Mich Jan 23, 2024) (lawsuit arose when the supplier stated it "would not deliver parts until [buyer] paid a price increase of approximately 17%"); *Ultra Mfg (USA) Inc v ER Wagner Mfg Co*, 713 F Supp 3d 394, 395 (ED Mich 2024) (lawsuit arose when supplier sought a price increase); *Feighner Company, Inc v Thru-Flow, Inc*, 730 F Supp 3d 684, 687-88 (WD

[4] Commentators have noted the artificiality of these disputes. Sharkey Article 44 (noting that when a supplier's profit margin decreases, they "often seek the advice of counsel to . . . explore legal avenues to either re-negotiate the terms of the agreement, or cease supply and 'exit the business,'"; and that "the supplier's attorney will likely first focus on the terms of the contract,"—which "[i]n most cases . . . [is] or at least [is] intended to be [a] requirements contract"—and determine if the contract is "vulnerable to a finding of invalidity" based on quantity term).

Mich 2024) (same); *L&P Auto Luxembourg v Neways Elecs Riesa GmbH & Co KG*, No. 24-12202, 2024 WL 4595114, at *1 (ED Mich Oct 28, 2024) (same); *FCA US, LLC v MacLean-Fogg Component Sols, LLC*, No. 24-11165, 2025 WL 877534, at *1 (ED Mich Mar 20, 2025) (same).

Thus, suppliers' complaints of a lack of fairness or mutual obligation in the quantity term ring hollow. In these suits, the not-so-well-kept secret is that the supplier is neither confused nor even concerned about the quantity of parts it is meant to supply under the contract. Kamax and other suppliers' tales of woe regarding the alleged lack of mutuality in their contracts are wholly apocryphal and their arguments are sophistry. There is no uncertainty about the buyer's obligation to purchase in automotive supply contracts. The suppliers are, in essence, commandeering the courts, hoping that they can reshape Michigan law to further their own ulterior motives.

This Court should reject this tactic. In other contexts, Michigan law stresses the need for a litigant's advocacy to be "sincere." See *Detroit Fire Fighters Ass'n v City of Detroit*, 449 Mich 629, 633; 537 NW2d 436 (1995). Similarly, Michigan disfavors parties who try to evade certain contractual obligations by challenging other provisions of the contract. *Samuel D Begola Services v Wild Bros*, 210 Mich App 636, 641; 534 NW2d 217 (1995) ("A general rule of contract law is that the failure of a distinct part of a contract does not void valid, severable provisions."). This is particularly true where the parties clearly intended to be bound by the contract at issue. *Id*. (a "primary consideration" of contract enforcement "is the intention of the parties."); MCL 440.2204(3) ("Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy."); *Calhoun County v Blue Cross Blue Shield Michigan*, 297 Mich App 1, 14; 824 NW2d 202 (2012) ("[W]e are ever mindful that judicial avoidance of contractual obligations because of indefiniteness is not favored under Michigan law, and so when

the promises and performances of each party are set forth with reasonable certainty, the contract will not fail for indefiniteness[.]").

"In litigation as in life, there is much to be said for maxims such as 'if it ain't broke, don't fix it.'" *United States v Natanel*, 938 F.2d 302, 310 (CA1 1991). As discussed below, several practical realities protect suppliers, which some themselves have taken advantage of when threatening to stop shipment unless they receive a price increase, such as their possession of the tools for making the parts, the just-in-time nature of the business, and the lengthy approval process that the OEMs require to replace suppliers.

Rewriting current Michigan law to appease Kamax is further unnecessary because these practical realities are buttressed by ample legal protections to suppliers who are parties to contracts with flexible quantity terms. These include, for example, the overarching duty of good faith that applies to all contracts for the sale of goods, and, in particular, the determination of quantity: "[t]he party who will determine quantity is required to operate his plant or conduct his business in good faith and according to commercial standards of fair dealing in the trade so that his output or requirements will approximate a reasonably foreseeable figure." MCL 440.2306, cmt. 2. Thus, although an elastic quantity term allows for some variance in quantity, a buyer may not make an unreasonable or bad-faith variance. See *Kamax*, 2025 WL 1420392, at *2 (discussing "the good faith and customary practices that govern" automotive supply relationships). Suppliers are therefore not at the mercy of their customers, especially when it comes to quantity.

Moreover, it is important to remember that, to satisfy the statute of frauds, the parties' written agreement need only establish the quantity term with minimal clarity. See MCL 440.2204(3). This is because "the purpose of the required writing is to provide a basis for believing that oral evidence which is offered rests upon a real transaction." *In re Frost*, 130 Mich App 556,

561; 344 NW2d 331 (1983). If a dispute about a quantity term arises, suppliers are able to rely on parol evidence. See *Airboss*, 511 Mich at 194 (a minimally sufficient quantity term allows a court "to use evidence of past practice (or parol evidence) to discern the parties' intent."). In fact, the Michigan Legislature specifically contemplated that parol evidence would be used to supplement the parties' agreed-upon quantity term by codifying parol evidence into the statutory definition of quantity for the purposes of requirements contracts. See MCL 440.2306(1) ("A term which measures the quantity by . . . the requirements of the buyer means such actual . . . requirement as may occur in good faith except that no quantity unreasonably disproportionate to any **stated estimate** or in the absence of a stated estimate to any **normal or otherwise comparable prior . . . requirements** may be tendered or demanded.") (emphasis added). Non-specificity in quantity terms is a feature of requirements contracts, not a bug, and the Legislature expected courts to use parol evidence to supplement nonspecific quantity terms in such contracts. See *Airboss*, 511 Mich at 191 (providing that a "[a] requirements contract can be nonspecific as to the quantity" if the "quantity term can be evaluated further using parol evidence.").

Kamax has argued that parol evidence is only permissible to establish the buyer's requirements when the quantity term is ambiguous, not the quantity to which the parties agreed when the term is nonspecific. Although parol evidence can, of course, be used to clear up a latent ambiguity to determine the buyer's requirements, *In re Frost*, 130 Mich App at 565 (finding error where the lower court declined to consider parol evidence to determine what was meant by "all wood sawable"), the *Airboss* Court specifically held that parol evidence can also be used to "evaluate[]" a quantity term that is simply "nonspecific as to quantity," 511 Mich at 191; see also *id.* at 181 ("[W[hen a contract provides a quantity term but fails to express details sufficient to

determine the specific or total quantity, it may be explained or supplemented by parol evidence.") (quotations marks omitted); *id.* at 196 ("[P]arol evidence can be used to determine the specific total of an imprecise quantity in a requirements . . . contract under the UCC."). Put differently, ambiguity in the quantity term is not the exclusive grounds to consider parol evidence. Under *Airboss*, non-specificity of quantity likewise presents an appropriate circumstance for the consideration of parol evidence. This is further confirmed by MCL 440.2306(1)'s explicit inclusion of parol evidence into the definition of a quantity term for purposes of a requirements contract.

Given its just-in-time nature, the automotive supply chain provides ample parol evidence by which to evaluate a nonspecific quantity term. The success of automotive supply depends upon several forms of reliable parol evidence, such as predicted program volumes, weekly extended forecasts, releases (both "soft" and "firm"), ordering history, minimum/maximum supply expectations set forth in purchase orders, and the production approval processes through which suppliers demonstrate that they can run at the rate reasonably required by program volume. In the automotive business in particular, a buyer's success is predicated on its ability to clearly communicate quantities in order to meet the demands of just-in-time supply. This reality is reflected in the case law: in no case that this Court will consider in deciding this question will the Court see a supplier making a bona-fide, evidence-based claim that it did not know the quantity of the requirements it was being asked to produce.[5]

[5] Notably, this reality is reflected in *Cadillac Rubber* itself. There, the Court of Appeals found that it was "undisputed" that the parties conducted themselves according to "material authorization releases" and "reasonable forecast[s] of future requirements." 331 Mich App at 430-31. This type of evidence will be available in all supplier disputes, which means that the quantity term will largely be undisputed or objectively discernable.

Kamax has presented this Court with a solution in search of a problem. Suppliers are not actually confused about what quantities they are expected to supply to their customers under contracts with flexible quantity terms and, when confusion actually arises, Michigan already provides ample tools to clear it up. Suppliers just want to be able to re-negotiate the fixed contract price at their convenience. This Court should be loath to meddle with the validity of contracts between sophisticated parties that present no practical or legal conundrum, especially when these cases really amount to a handful of suppliers trying to sell this Court a false bill of goods. There is no problem to solve.

## II. THE AUTOMOTIVE SUPPLY CHAIN NEEDS FLEXIBLE QUANTITY TERMS.

Since its adoption by the Legislature in 1962, Michigan's Uniform Commercial Code has expressly acknowledged that "[r]easonable elasticity" in a supply contract's quantity term is appropriate. MCL 440.2306, cmt. 2. The automotive industry has relied on this allowance of reasonable elasticity and has structured the contracts underlying its supply chain accordingly. Moreover, this Court has firmly established that requirements contracts do not need to be exclusive. *Airboss*, 551 Mich at 194. This rule allows for dual sources for the same requirements, which promotes the flexibility and redundancy necessary for the automotive industry. If, however, the Court imposes a rule that each supplier in a requirements contract arrangement must receive a fixed percentage (which is what Kamax requests), it will negate the benefits of dual sources and effectively rewrite an area of Michigan law that has engendered significant reliance.

As a threshold matter, Kamax's rule would be unworkable. For example, it would be impossible to ensure that one supplier receives exactly 60% of the buyer's requirements and the other receives exactly 40% of the buyer's requirements. Breaches will be constant. But even worse, a rigid, fixed-percentage rule would generate absurd results.

Imagine, for example, that a Tier-1 supplier contracts with a single Tier-2 supplier for a specific part and usually purchases approximately 1,000 parts per month. If Kamax's position is adopted, and flexible quantity terms are disallowed, this contract would need to specify that the Tier-2 is providing 100% of the Tier-1 supplier's requirements. If the contract provided for less than 100%, the customer would not be able to require that the supplier meet all of its needs, and if it included a flexible term, it would not be enforceable. But now imagine that the OEM doubles its production volume. The Tier-1 now needs approximately 2,000 parts per month, which is beyond the Tier-2's capacity and could reasonably necessitate the addition of a second Tier-2. In Kamax's world, the Tier-1 is stuck with the overwhelmed Tier-2, with no ability to onboard a second source of supply without breaching the contract, despite the fact that the supplier might still receive the same volume of orders, even with an added supplier, and consistent with the expectations of the parties. To add an additional supplier, the customer would be at the mercy of the original supplier, which could require a complete renegotiation of all of the terms. It would also be unreasonable to suggest that the Tier-1 should wait for the Tier-2 to breach the contract and jeopardize supply before the Tier-1 could add another supplier. On the other hand, a flexible quantity term would allow the Tier-1 to secure a second source of supply without disturbing the original Tier-2's 1000-parts-per month production volume or risking a plant shutdown if renegotiations go too long.

Or imagine a scenario under which an OEM relocates some portion of a dual-sourced program such that logistics requires that the order be shifted in good faith between suppliers. Under a fixed-percentage contract, the Tier-1 supplier again might be forced to renegotiate, with the Tier-2 supplier unfairly having the upper hand. But under a flexible-quantity term, the supply

could be seamlessly shifted in the appropriate amount between suppliers, which would be consistent with the expectations of the parties if the OEM made such a change.

Finally, imagine that it becomes evident that a Tier-2 supplier is likely to experience some acute production issue (e.g., a labor shortage, a lack of raw material, etc.). Rather than being able to shift production to the other source in good faith for perhaps the short-term, the Tier-1 supplier would face the risk of breach even though the Tier-2 supplier's own shortcomings placed the supply chain at risk. Under Kamax's construct, until the Tier-2 supplier actually commits the first material breach, the Tier-1 supplier is at the mercy of a needlessly rigid fixed-percentage contract. A Tier-1 supplier should not have to wait for a supplier to breach the contract when it foresees in good faith that the supplier's issues will put the supply chain at risk. Waiting for a breach in a just-in-time supply chain is reckless.

Advocates for Kamax position offer a parade of horribles in which buyers could use flexible quantity terms to freeze out domestic suppliers and outsource supply to foreign countries. But, as demonstrated above, the quantity term cases rarely, if ever, arise out a *buyer*'s desire to exit a supply relationship. Rather, *suppliers* are the ones trying to sidestep their contractual obligations. And if a buyer ever tried to wrongfully shift supply, the supplier would be able to invoke the buyer's duty of good faith and use parol evidence to establish the parties' intent for their relationship.[6]

These examples demonstrate the need for flexibility of source—a need that this Court has already recognized and taken into account through its decision in *Airboss*. There, this Court

[6] Kamax may offer various responses to these scenarios, but the overriding point is undisputable—regardless of whatever legal remedies the Tier-1 would have (i.e. termination for convenience or a claim against the OEM), the mere need to exercise them threatens the continuity of the supply chain.

explicitly held that requirements contracts do not need to be exclusive. *Airboss*, 511 Mich at 194 ("[R]equirements contracts do not always have to be exclusive. A seller can agree to provide a nonexclusive part of the buyer's total need."). This rule protects an overriding concern of Michigan's automotive industry: the need for continuity of supply. Sharkey Article 44 ("The current lean and fast-paced supply chain, which operates on just-in-time-inventory systems, **must operate without interruption**.") (emphasis added). If a buyer was forced to use one just-in-time supplier as its exclusive source, that supplier could hold the entire supply chain hostage during a price dispute. *Id.* The hallmark of a non-exclusive requirements contract is its flexibility—it allows the buyer to allocate its supply across multiple sources, consistent with the parties' expectations and the buyer's exercise of good faith. See MCL 440.2306, cmt. 2; *Advent Systems Ltd v Unisys Corp*, 925 F2d 670, 678-79 (3d Cir 1991); *Cadillac Rubber*, 331 Mich App at 426; *Kamax*, 2025 WL 1420392, at *2. These variables allow suppliers and buyers throughout the supply chain to collaborate and coordinate in a way that promotes fail safes; responsiveness to changing conditions; and continuous production.

Kamax's view that requirements contracts must have fixed percentages defeats the purpose of non-exclusive requirements contracts and contradicts the holding of *Airboss*. If requirements contracts must be precisely allocated (e.g., 60% to Supplier A and 40% to Supplier B), then they become *de facto* exclusive requirements contracts (i.e., Supplier A has an exclusive right to manufacture 60% of the buyer's needs). This conclusion is well-recognized in jurisdictions that require exclusivity. For example, even though New Hampshire requires exclusivity, its Supreme Court has held that "despite the presence of another supplier, the contract may be sufficiently 'exclusive' . . . where a purchaser agrees to purchase exclusively from a seller up to a certain quantity" by promising to purchase a "major share" or "major portion" of the purchaser's

requirements. *PMC Corp v Houston Wire & Cable Co*, 147 NH 685, 692; 797 A2d 125 (2002). Because a fixed-percentage, non-exclusive quantity term would obligate the buyer to purchase a minimum number of parts based on its needs (i.e., *exactly* 60%), this type of contract would pass muster in jurisdictions that require exclusivity. In this way, Kamax's position is contrary to *Airboss*'s rule regarding non-exclusive contracts and, if adopted, would implicitly abrogate this Court's precedent on this issue—every requirements contract would effectively become exclusive.

The Court should not allow an unspoken repudiation of *Airboss*, especially when the Court explicitly recognized the viability of non-exclusive contracts and given the positive ends that non-exclusive contracts serve. As the Third Circuit has noted, there are "strong" reasons to enforce non-exclusive requirements contracts:

> The purchasing party, perhaps unable to anticipate its precise needs, nevertheless wishes to have assurances of supply and fixed price. The seller, on the other hand, finds an advantage in having a steady customer. Such arrangements have commercial value. **To deny enforceability through a rigid reading of the quantity term in the statute of frauds would run contrary to the basic thrust of the Code—to conform the law to business reality and practices**.

*Advent Systems*, 925 F2d at 678-79 (holding that a non-exclusive requirements contract satisfied the statue of frauds) (emphasis added). Fixed-percentage contracts do not conform to business reality and practices. Stringing a series of essentially exclusive requirements contracts together would create more opportunities for suppliers to cause mischief and upset the supply chain because buyers would have no right to shift requirements between suppliers when necessary. This could not have been what the Court intended when it recognized the viability of non-exclusive requirements contracts in *Airboss*.

Michigan's acceptance of non-exclusive contracts reflects a willingness to allow buyers to shift their requirements among suppliers, subject to the protections afforded by the UCC and the expectations of the parties. This Court struck a balance that favors the continuity of supply.

Sharkey Article 47 (noting, pre-*Airboss*, that non-exclusive contracts would benefit buyers "enormously" and "affirm [their] power to enforce long-term supply commitment as written" while working with "alternate suppliers."). There is nothing unfair about this rule—in the supply chain, customers are usually suppliers themselves so they too must abide by it. And, as illustrated by the examples provided above, in the world of modern manufacturing, this is the better rule. See MCL 440.1103(1)(a)-(b) (the UCC "must be liberally construed and applied . . . [t]o simplify, clarify, and modernize the law governing commercial transactions" and "[t]o permit the continued expansion of commercial practices through custom, usage and agreement of the parties."). This Court should be loath to abandon the benefits of its recognition of non-exclusive requirements contracts for the rigid rule being offered in a blatant attempt to escape the parties' bargained-for price. *Advent Systems*, 925 F2d at 677-78 (explaining the "strong" reasons for and "commercial value" of non-exclusive requirements contracts, specifically the need to "conform the law to business reality and practices.").

Non-exclusive contracts also promote the interests of smaller Tier-2 suppliers, which further strengthens the supply chain. If this Court requires that shares be rigidly set in advance, buyers will be prone to avoid the risk of placing their supply in the hands of smaller and perhaps new entrants into the market. If supply cannot be shifted to some degree when necessary, Tier-1 suppliers will gravitate to larger, well-capitalized Tier-2 suppliers that are more stable and capable of modifying their output. Otherwise, with a small supplier in a rigidly fixed contract, a Tier-1 is at the mercy of that supplier in the absence of a breach. Why would a Tier-1 choose that risk? In this way smaller suppliers will be deprived of business opportunities, threatening their existence and risking *de facto* monopolies among large suppliers for certain categories of business. Given

this risk, an implicit abrogation of *Airboss*'s recognition of non-exclusive requirements contracts is unwarranted, even for the group of suppliers Kamax would have this Court believe it represents.

Moreover, a quantity term with flexibility does not leave suppliers without protections. As noted in the previous section, Michigan law protects suppliers against a buyer shifting supply in bad faith or contrary to the reasonable expectations of the parties. There are also practical realities in the automotive industry that inherently protect the suppliers from arbitrary shifts in supply. Once a supplier is in full production, they are not only in possession of the OEM-approved tooling but have also completed the OEM's lengthy approval process to produce the parts. For these reasons, if often takes several months or more for another supplier to be approved, meaning that supply is not easily shifted under any circumstances. Against this backdrop, adopting Kamax's position would unfairly swing the competitive balance to strongly favor the suppliers, adding to their inherent advantages and leverage by giving them control over any changes in supply.

A quantity term with flexibility is also necessary to respond to changing demands from the top of the supply chain in a just-in-time environment. OEMs build just as many cars as they project they can sell and utilize a just-in-time inventory model that minimizes the amount of parts they warehouse. This model is therefore reflected throughout the supply chain. An OEM's order to a Tier-1 supplier could vary from month-to-month, so a Tier-1 supplier's order to a Tier-2 supplier correspondingly must vary. An elastic quantity term is therefore critical to secure a stable, long-term supply source and reflects the inherent variability every supplier accepts when it decides to participate in the auto industry. See *Johnson Controls, Inc v TRW Vehicle Safety Sys, Inc*, 491 F Supp 2d 707 (ED Mich 2007) (describing the practice "among automotive suppliers to enter into long-term, just-in-time production arrangements that rely on a fixed price and a variable quantity, and provide flexibility to adjust to changing commercial conditions.").

Opponents to this view argue that accepting it would make Michigan an "outlier" in UCC law. But Michigan occupies a special status in UCC jurisprudence: for example, it is already an outlier in acknowledging non-exclusive requirements contracts. Following the crowd is an inappropriate rationale in the UCC context because "the basic thrust of the [UCC]" is "to conform the law to business reality and practices." *Advent Systems*, 925 F.2d at 678. Michigan's automotive businesses (which have served as the cornerstone of Michigan's economy for a century) have universally adopted the just-in-time supply system, which requires flexible, long-term, non-exclusive requirements contracts. It is unsurprising then that this Court's jurisprudence would conform to this business reality and practice of this state. Nobody accuses the Delaware Supreme Court of being an outlier when it decides an issue of corporate law, nor does anyone do so when the Texas Supreme Court decides a mineral-rights case. Rather, those courts, like this Court here, are merely deciding an issue uniquely within their expertise, based on the specific interests of their jurisdiction.

## III. REQUIRING A FIXED-PERCENTAGE QUANTITY TERM WILL CAUSE SIGNIFICANT DISRUPTION IN THE AUTOMOTIVE SUPPLY CHAIN.

The automotive supply chain is a complex ecosystem that depends on the enforceability of interconnected contracts at each level. Kamax is asking this Court to invalidate thousands and thousands of those contracts.[7] If that happens, the industry will be thrown into turmoil. Suppliers will have the opportunity to renegotiate every term of their contract or walk away from them

[7] Proponents of fixed-percentage quantity terms have noted that the supply chain has survived the one-off litigations on this issue that have occurred to date. That is a bit like saying that, because a homeowner could replace a broken window, you can break all the windows in the house. This Court's opinion on this issue will affect thousands of contracts the instant it is published. Its consequences will be far greater than any one-on-one litigation that has occurred to date. Any notion that the supply chain would adjust to a new regime ignores the necessary growing pains, as well as the systemic uncertainty that Kamax's approach would bring.

entirely. That would be unprecedented; in essence, the automotive supply chain may need to be rebuilt on the fly. Any supplier could hold the supply chain hostage, which will cause shortages, shift eliminations, and plant furloughs across the industry. These costs will ultimately be borne by consumers.

The automotive supply chain is inextricably intertwined with Michigan's financial well-being. According to the Detroit Regional Chamber, Michigan's automotive industry creates approximately $225 billion of economic output, representing 18% of the State's gross state product. An Economic Contribution Study of Michigan's Mobility Industry 12, MichAuto, December 2024 (available at https://issuu.com/detroitregionalchamber/docs/2024_mobility_economic_contribution). The automotive industry directly or indirectly employs 576,000 people, which is 10% of Michigan's total employment. *Id.*

If parts become scarce for whatever reason, employees can lose their jobs, which causes a ripple effect throughout the entire economy. See, e.g., Ewing & Cohen, *How Car Shortages Are Putting the World's Economy at Risk*, NEW YORK TIMES, November 2, 2021 (available at https://www.nytimes.com/2021/11/02/business/car-shortage-global-economy.html) (discussing a shortage of semiconductors and noting that "[a] slowdown in automaking can leave scars that take years to recover from."). Idled factories are a death knell to Michigan's economy, and this Court should consider this consequence in rendering its decision. See *Bodnar v St John Providence, Inc*, 327 Mich App 203; 933 NW2d 363 (2019) ("[C]ourts avoid interpreting contracts in a manner that would impose unreasonable conditions or absurd results."); *Advent Systems*, 925 F2d at 677-78 (the UCC's "basic thrust" is "to conform the law to business reality and practices.").

## CONCLUSION

Kamax asks this Court to swoop in and micromanage supply contracts by requiring rigidity in an environment that demands and thrives with flexibility. This sort of intervention is not only unnecessary, but dangerous. Flexible quantity terms provide ample protections to suppliers due to the parties' inherent obligation to act in good faith and the plethora of parol evidence to determine intent. Practical realities also protect suppliers—once a contract is awarded, buyers cannot readily source large quantities elsewhere due to the suppliers' OEM-approved status and possession of tooling. The sufficiency of these protections is confirmed by the fact that these types of disputes rarely, if ever, actually concern the parties' intent regarding quantity. They are merely a means to force renegotiation of price.

If the Court adopts Kamax's position, it would contradict the "reasonable elasticity" historically allowed by the Uniform Commercial Code, which is a bedrock of today's automotive supply chain. This would throw a wrench into the automotive industry, threatening the economy at large. To avoid this result, Magna and DDC respectfully submit that the Court should adopt *Cadillac Rubber* and affirm the Court of Appeals.

Respectfully submitted,

VARNUM LLP

By: */s/ Ronald G. DeWaard*

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## CERTIFICATE OF COMPLIANCE

I certify that this document complies with the word limits of MCR 7.212(B) because it contains 6,083 words.

*/s/ Ronald G. DeWaard*
Ronald G. DeWaard (P44117)

# Exhibit A

**Dan Sharkey** • 2nd
Member at Brooks Wilkins Sharkey & Turco, PLLC
2w •

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I don't post for a year, then twice this week - why? Two big cases on the same critical issue, now headed to the Michigan Supreme Court. Suppliers don't care if they have a requirements contract; they want to know if they can exit an unprofitable deal or get a price increase, because it often means the difference between bankruptcy and surviving (or better, thriving).

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In a case with huge potential implications for automotive supply-chain contracts, a federal judge in Detroit just certified the following question to the Michigan Supreme Court: does a contract stating that it is for "1 part to 100% of buyer's needs" establish a requirements contract?

Detroit Diesel Corp. v. Martinrea Honsel Mexico, U.S. District Court for the E.D. of Michigan Case No. 24-11557 (Grey, J.) citing MSSC Inc. v. Airboss Flexible Products Co., 999 N.W.2d 335 (Mich. 2023).

The Order is attached. **Brooks Wilkins Sharkey & Turco PLLC** represents Martinrea Honsel Mexico. Together with the pending appeal in FCA/Stellantis v. Kamax, which involves a similar issue, 2025 should make for an interesting year. Win or lose, we will continue to provide updates on both cases.

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

DETROIT DIESEL CORPORATION,

Plaintiff,

Case No. 24-11557
Hon. Jonathan J.C. C

v.

MARTINREA HONSEL MEXICO SA de CV,

Defendant.
_____/

**ORDER CERTIFYING A QUESTION OF LAW TO THE MICHIGAN SUPREME COURT**

## I. INTRODUCTION

The instant action involves a dispute between Plaintiff De Diesel Corporation ("DDC") and Defendant Martinrea Honsel Mexic de CV ("Martinrea") regarding the terms of their agreement for purchase and sale of transmission housings. During the litigation o parties' contract, an important issue of Michigan state law has ar whether contractual language that obligates a buyer to purchase seller and a seller to sell to buyer "1 part to 100% of [buyer's] ne