# Public Policy Position
# Amicus Brief in *FCA v Kamax*

The Business Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,182 members. The Business Law Section is not the State Bar of Michigan and the position expressed herein is that of the Business Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Business Law Section has a public policy decision-making body with 14 members. On March 10, 2026, the Section adopted its position after a discussion and vote at a scheduled meeting. 5 members voted in favor of the Section's position, 4 members voted against this position, 5 members abstained, 0 members did not vote.

**Explanation:**
The position is as explained in the attached amicus brief to be filed by the Business Law Section in FCA US, LLC v. Kamax, Inc., Supreme Court Docket No. 168680.

**Contact Person:** Michael Molitor
**Email:** molitorm@cooley.edu

**STATE OF MICHIGAN**

**IN THE SUPREME COURT**

**FCA US LLC,**

**Plaintiff-Appellee,**

**v**

**KAMAX, INC.,**

**Defendant-Appellant,**

**and**

**KAMAX MEXICO S de RL. De CV,**

**Defendant.**

**Supreme Court Docket No. 168680**

**COA: 371234**

**Circuit Court: 24-205863-CB**

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# BRIEF OF *AMICUS CURIAE* THE BUSINESS LAW SECTION OF THE STATE BAR OF MICHIGAN

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## QUESTIONS PRESENTED

**I. WHETHER *CADILLAC RUBBER & PLASTICS, INC V TUBULAR METAL SYSTEMS, LLC*, 331 MICH APP 416 (2020), REMAINS GOOD LAW AFTER THIS COURT'S DECISION IN *MSSC, INC V AIRBOSS FLEXIBLE PRODUCTS CO*, 511 MICH 176 (2023)?**

The Court of Appeals answered "Yes."

Plaintiff-Appellee FCA US LLC answers "Yes."

Defendant-Appellant Kamax, Inc. answers "No."

Amicus Curiae answers "No."

**II. WHETHER A WRITTEN CONTRACT FOR APPROXIMATELY 65%–100% OF A BUYER'S REQUIREMENTS SATISFIES MCL 440.2201(1)?**

The Court of Appeals answered "Yes."

Plaintiff-Appellee FCA US LLC answers "Yes."

Defendant-Appellant Kamax, Inc. answers "No."

Amicus Curiae takes no position.

## BASIS OF JURISDICTION

*Amicus curiae* agrees that the issues raised by this appeal "involve a legal principle of major significance to the state's jurisprudence" and are therefore worthy of this Court's consideration under MCR 7.305(B)(3).

## STANDARD OF REVIEW

The trial court denied Kamax's motion for summary disposition based on the Uniform Commercial Code. Review of denial of a motion for summary disposition is *de novo*. *West v Gen Motors Corp*, 469 Mich 177, 183 (2003). Interpretation of a statute is also reviewed *de novo*. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32 (2003).

## INTEREST OF AMICUS CURIAE

The Business Law Section of the State Bar of Michigan files this brief *amicus curiae* pursuant to the Court's invitation as set forth in its Order of October 29, 2025.

## REQUIRED STATEMENT AND REPORT OF AMICUS CURIAE REGARDING POSITION TAKEN

The Court's Order of October 29, 2025 invited briefing on: (1) whether *Cadillac Rubber & Plastics, Inc v Tubular Metal Sys, LLC*, 331 Mich App 416 (2020), remains good law after this Court's decision in *MSSC, Inc v Airboss Flexible Prods Co*, 511 Mich 176 (2023); and (2) whether a written contract for approximately 65–100% of a buyer's requirements satisfies MCL 440.2201(1). This amicus addresses only question (1) and takes *no* position with regard to question (2) because the Council of the Section could reach no consensus on issue (2).

With regard to question (1), *Amicus* argues that this Court's decision in *Airboss* clarified two interlocking propositions of Michigan UCC law: that a contract for the sale of goods is enforceable only up to the quantity set forth in writing, and that a requirements contract is enforceable only when the writing specifies a "set share" of the buyer's requirements – which cannot be reconciled with *Cadillac Rubber*'s permissive approach to quantity terms. Because *Cadillac Rubber* allows a buyer to promise a minimal floor of one unit while retaining discretion over the remainder of its needs and treats the seller's obligation as "whatever the buyer orders," it effectively creates two different and mismatched quantity terms – a result *Airboss* flatly precludes. Accordingly, *Amicus* urges this Court to clarify that, to the extent *Cadillac Rubber* conflicts with *Airboss*'s "set share" principles, *Cadillac Rubber* is overruled by implication, and that a requirements contract exists only when the writing specifies a "set share" of the buyer's needs.

The Business Law Section is a section of the State Bar of Michigan. It does not speak for the State Bar of Michigan. The positions expressed in this brief are those of the Business Law Section only and are not the position of the State Bar of Michigan. The Business Law Section has not requested the State Bar of Michigan to take a position on, nor has the State Bar of Michigan taken a position on, the matters addressed in this brief.

The Section is not the State Bar of Michigan but is a group of members of the State Bar who voluntarily choose to join the Section based on common professional interest in business law matters. The purposes of the Section include the study of laws and administrative procedures pertaining to business law, the promotion of fair and just administration of business law, and the education of members of the State Bar of Michigan and the public on issues of business law

through publications, meetings, conferences, and other forums including the filing of amicus curiae briefs.

The Section currently has approximately 3,206 members of the State Bar who have voluntarily joined the Section. The affairs of the Section are governed by an elected council per the Section's bylaws. The positions taken in this brief are within the jurisdiction of the Section and were formally adopted by a vote of the Council at and after discussion at its meeting in conformance with the Section's bylaws on March 10, 2026, at which a quorum was present. The Council consists of 14 members due to one vacancy. Five Council members voted in favor of the positions that are presented in this amicus brief, four voted against, and five abstained. [1]

[1] As required by MCR 7.312(H)(4), *Amicus* states that no counsel for a party to this action authored the brief in whole or in part, and that no counsel for a party, no party itself, nor any other person made a monetary contribution intended to fund the preparation or submission of the brief.

## FACTS

The facts are thoroughly stated by the parties. In short, this matter arises from a dispute between vehicle manufacturer FCA US LLC ("FCA") and automotive fastener supplier Kamax Inc. ("Kamax") regarding whether FCA's purchase orders constitute enforceable requirements contracts or, instead, release-by-release agreements under Michigan's Uniform Commercial Code MCL 440.1101 *et seq.* ("UCC").

This appeal arises from a supply relationship between FCA and Kamax, in which FCA issued purchase orders incorporating its general terms and conditions. The orders include a provision stating that FCA will purchase "approximately 65% to 100%" of its requirements. The parties' dispute centers on whether the purchase orders form enforceable requirements contracts or are instead enforceable only on a release-by-release basis under Michigan's UCC.

In early 2024, after communications regarding pricing and continued supply, Kamax ceased deliveries to FCA, and FCA filed suit in the circuit court seeking injunctive and other relief. The circuit court entered a temporary restraining order on February 29, 2024, and later granted a preliminary injunction compelling Kamax to continue supplying parts. The circuit court subsequently denied Kamax's motion for summary disposition, concluding that the agreements constituted requirements contracts and that the "approximately 65%-100%" language satisfied UCC § 2-201(1), relying on *Cadillac Rubber & Plastics, Inc v Tubular Metal Systems, LLC*, 331 Mich App 416 (2020). Kamax sought appellate review, and the Court of Appeals granted leave to appeal and affirmed the circuit court's decision, rejecting Kamax's argument that *Cadillac Rubber* had been implicitly overruled. Kamax then appealed to this Court, which granted leave to appeal by Order dated October 29, 2025, and invited amicus curiae briefing on the questions presented.

In this appeal, the parties' legal positions are framed by recent Michigan authority addressing quantity terms in contracts for the sale of goods. FCA contends that the agreement is a valid requirements contract consistent with *Cadillac Rubber*'s acceptance of ranges as quantity terms. Appellee Br. 1–5. FCA argues that the *Airboss* Court expressly declined to overrule *Cadillac Rubber*, and that a quantity term expressed as a range – here, "approximately 65%–100%" of FCA's requirements – creates the mutual obligation necessary under the UCC because FCA is obligated to purchase at least 65% of its requirements from Kamax. Appellee Br. 19–22. FCA further contends that the word "approximately" does not negate the quantity term's validity and that the UCC expressly contemplates elasticity in requirements contracts through minimums and maximums. Appellee Br. 42–44.

Kamax counters that the central issue is not whether the contract is supported by consideration – which it concedes – but the *scope* of enforceability under UCC § 2-201(1). Appellant Reply 8–10. Kamax argues that under *Airboss*, an enforceable requirements contract must specify a precise set share of the buyer's requirements, and that a range – particularly one prefaced by "approximately" – is imprecise and affords the buyer discretion inconsistent with UCC §§ 2-201 and 2-306(1). Appellant Br. 20–35. Kamax maintains that FCA's proposed interpretation creates a mismatch of obligations: FCA's quantity term (the amount it must buy) would be approximately 65%, while Kamax's obligation (the amount it must deliver) would be whatever FCA orders, up to 100% – a result that § 2-201(1) does not permit. Appellant Reply 3–6. Kamax thus maintains the Agreements are enforceable only on a release-by-release basis for firm quantities accepted in each release. Appellant Br. 40–45. Kamax further asserts that *Airboss* identified an "apparent inconsistency" between *Cadillac Rubber* and *Acemco, Inc v*

*Olympic Steel Lafayette, Inc*, 2005 WL 2810716 (Mich Ct App, Oct 27, 2005) that should be resolved by treating *Cadillac Rubber* as superseded. Appellant Br. 31–39.

## ARGUMENT

### I. *Airboss* Clarified the "Set Share" Requirement.

This Court's decision in *Airboss* clarified two interlocking propositions of Michigan UCC law that cannot be reconciled with *Cadillac Rubber*'s permissive approach to quantity terms. First, a contract for the sale of goods is enforceable "only … up to the quantity set forth in writing," *MSSC, Inc v Airboss Flexible Prods Co*, 511 Mich 176, 181 (2023), and the quantity term is the cap on enforceability for both parties. Second, a requirements contract is enforceable only when the writing specifies a "set share" of the buyer's requirements. *Airboss*, 511 Mich at 193; *Higuchi Int'l Corp v Autoliv ASP, Inc*, 103 F4th 400, 406 (6th Cir 2024). These propositions are in tension with *Cadillac Rubber*'s acceptance of *any* quantity as permissible under UCC § 2-201, and the Court should clarify that *Airboss*'s "set share" principle controls to the extent of any conflict. *Cadillac Rubber,* 331 Mich App at 429–31; *Airboss*, 511 Mich at 194.[2]

*Airboss*'s framework begins with UCC § 2-201(1): a court "can only enforce the contract up to the quantity set forth in writing." *Airboss*, 511 Mich at 181. It follows that the written quantity is not merely a threshold for contract formation; it is the limit of enforceability for both buyer and seller. To allow the buyer to be bound to only "at least one" while binding the seller to "whatever the buyer orders up to 100%," would create two different and mismatched obligations. *Airboss* flatly precludes that result.

*Airboss* also tethered the quantity term of a requirements contract to a "set share" (*Airboss*, 511 Mich at 183, 193) of the buyer's *needs*. A quantity measured by the buyer's discretion or

[2] Recent decisions acknowledge tension in applying *Cadillac Rubber* and *Airboss* pending this Court's guidance. *See Ultra Mfg (USA) Inc v ER Wagner Mfg Co*, 713 F Supp 3d 394, 398 (ED Mich 2024) (applying *Airboss*'s single-quantity-cap and set-share principles in the absence of a set share); *cf Webasto Roof Sys, Inc v Meteor Sealing Sys, LLC*, 2026 WL 308912 (ED Mich, Feb 5, 2026) (treating *Kamax* as precedent pending resolution by this Court).

otherwise not based on the buyer's needs is not measured by the buyer's requirements within the meaning of UCC § 2-306(1). *See Higuchi*, 103 F4th at 406–08. That is the core alignment between *Airboss* and *Acemco*'s observation that "any quantity" is "no quantity at all," *Airboss*, 511 Mich at 194 n4 (quoting *Acemco, Inc v Olympic Steel Lafayette, Inc*, 2005 WL 2810716, at *4 (Mich Ct App, Oct 27, 2005), and it is the core of *Airboss*'s irreconcilable conflict with *Cadillac Rubber*'s tolerance for a range that includes the entire universe of possible quantities, and the floor of which is not tied to the buyer's requirements. Simply put: if a writing leaves it to the buyer to decide whether it will purchase one unit, or some, or most, or all of its requirements from the seller, the quantity term is not fixed and cannot serve as the limit on enforceability for both parties that UCC § 2-201 requires.

## II. *Cadillac Rubber* Is Inconsistent with *Airboss* to the Extent It Conflicts with the Set-Share Principle.

*Cadillac Rubber* relied heavily on authority that *Airboss* later abrogated or rejected,[3] and *Cadilac Rubber*'s analysis is at odds with this Court's "set share" holding. *Airboss* expressly identified an "apparent inconsistency" between *Cadillac Rubbe*r and *Acemco* but declined to resolve it because the question was not necessary to the outcome in *Airboss*, leaving the issue "for another day." *Airboss,* 511 Mich at 194 n4. That day is today, and the inconsistency between the two cases – *Airboss* and *Cadillac Rubber* – is irreconcilable for two reasons.

First, *Cadillac Rubber* allows the buyer to promise a minimal floor of just one unit and retain discretion to buy up to 100% of its requirements from the seller, while obligating the seller to supply whatever the buyer orders. That scheme creates different quantity terms for the two parties. *Airboss*'s reading of UCC § 2-201 forecloses such a mismatch: the quantity must be *both*

[3] *See Johnson Controls, Inc v TRW Vehicle Safety Sys, Inc*, 491 F Supp 2d 707, 716 (ED Mich 2007) (relying on *Great N Packaging, Inc v Gen Tire & Rubber Co*, 154 Mich App 777 (1986), *overruled by Airboss*, 511 Mich 176).

the buyer's purchase commitment *and* the seller's delivery cap. Under *Airboss,* the UCC does not permit such asymmetric quantity obligations.

Second, *Cadillac Rubber*'s one unit to 100% of requirements only obligates a buyer to buy one unit of goods, regardless of whether it *needs* one unit or a million units; thus it does not specify "a set share of its total need" from the seller. *Airboss*, 511 Mich at 183. This cannot, under *Airboss*'s reasoning, be considered a requirements contract. The "level of mutual obligation" that differentiates requirements contracts from release-by-release arrangements in *Airboss* turns on whether the quantity is measured by the buyer's requirements, not by the buyer's ongoing choices. *Cadillac Rubber*'s tolerance for buyer discretion sits in tension with *Airboss*'s 'set share' framework.[4] This Court explained:

> The key difference between a requirements contract and a release-by-release contract rests in the level of mutual obligation between the parties and the risk each party bears. A requirements contract assures the seller that the buyer will be a customer for the length of the contract, but the seller cannot reject future orders for the length of the contract. In contrast, a release-by-release contract "gives both parties the freedom to allow their contractual obligations to expire in short order by either not issuing or not accepting a new release." The seller cannot be guaranteed future business from the buyer, but the seller can accept or reject any offer for future orders.

*Airboss,* 511 Mich at 185 (internal citations omitted).

The text of UCC § 2-306(1) further underscores the incompatibility between *Cadillac Rubber* and *Airboss*. The statute provides that a requirements contract "means such actual . . .

[4] Federal courts applying *Airboss* have recognized this conflict. In *Ultra Manufacturing*, the court held that an imprecise "some portion or all" quantity term—language materially similar in effect to *Cadillac Rubber*'s "one part to 100%"—fails under *Airboss* and cannot support a requirements contract. The court concluded that *Airboss* irreconcilably conflicts with *Cadillac Rubber* and that *Airboss* controls. *See Ultra Mfg (USA) Inc v ER Wagner Mfg Co*, 713 F Supp 3d 394, 398 (ED Mich 2024). That analysis *reflects* faithful adherence to *Airboss*'s rule and its insistence on a set share for requirements contracts. *But see*, note 2, *supra*.

requirements 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." MCL 440.2306(1). This "unreasonably disproportionate" safeguard presupposes a fixed referent – either a "stated estimate" or "normal or otherwise comparable prior" requirements – against which actual orders can be measured.

Official Comment 3 provides guidance[5] for how that referent operates: "[I]f an estimate of output or requirements is included in the agreement, no quantity unreasonably disproportionate to it may be tendered or demanded. Any minimum or maximum set by the agreement shows a ***clear limit on the intended elasticity***. In similar fashion, the agreed estimate is to be regarded as a center around which the parties intend the variation to occur." MCL 440.2306, cmt 3 (emphasis added). The "center" concept is critical. It presupposes that the parties have agreed to a single, fixed point of reference – the "agreed estimate" – with permissible fluctuation radiating outward from that point.

The distinction between Comment 3's "center" concept and the kind of elasticity contemplated by the UCC is critical. Comment 2 to UCC § 2-306 recognizes that a requirements contract may entail some degree of variability (which it describes as "elasticity") but that variability operates within the buyer's actual needs, not within the quantity commitment itself. MCL 440.2306, cmt 2; *see also* Appellant Br. 23. Thus, *Cadillac Rubber*'s "one part to one hundred percent" minimums/maximums cannot "show a clear limit on the intended elasticity" because it does not meaningfully constrain how far actual orders may deviate from the center.

[5] *E.g. Shurlow v Bonthuis*, 456 Mich 730, 735 n7 (1998) ("[a]lthough lacking the force of law, the official comments appended to each section of the UCC are useful aids to interpretation and construction.") (citations omitted).

In contrast, *Cadillac Rubber*'s one-unit floor is fundamentally incompatible with the structure set forth in the UCC, and its commentary. A contract for one part to 100% of buyer's requirements has no "center around which the parties intend the variation to occur." MCL 440.2306, cmt 3. The buyer's commitment is fixed at one unit regardless of whether it needs one unit or one million units; everything above that single unit is discretionary. One unit cannot be that "center": it is a floor so low that it bears no relationship to the buyer's actual requirements, and the "maximum" of 100% simply restates the outer boundary of the buyer's total need. The resulting "range" thus encompasses every *possible* quantity, which is not a band of variation around a center but the entire universe of possible orders.[6] In other words, the UCC contemplates that a buyer's business may grow or contract, and with it the absolute volume of goods the buyer needs; what the UCC does not contemplate is that the buyer's contractual commitment itself may float across the entire spectrum of possible quantities. That is the fundamental defect in *Cadillac Rubber*'s framework: it conflates elasticity in the buyer's *underlying requirements* with elasticity in the *quantity term,* collapsing a structural distinction the UCC is careful to maintain.

This unbounded range of elasticity defeats the operation of UCC § 2-306(1)'s disproportionality safeguard. The safeguard functions by measuring actual orders against the stated estimate or prior requirements to determine whether they are "unreasonably disproportionate."[7]

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[6] Some may argue that zero is a possible quantity, but it is not. Zero is the absence of a quantity. That is the essence of the *Airboss* holding: zero obligation means no quantity term. No contract could be enforced that lists its quantity term as zero. Thus, "one part to 100%" covers all possible quantities. If all possible quantities can be an acceptable quantity term, then UCC § 2-201's quantity mandate is meaningless.

[7] Of course, the comments to the UCC expressly approve of *some* range of quantities, within the bounds of reason and good faith:

> Reasonable elasticity in the requirements is expressly envisaged by this section and good faith variations from prior requirements are permitted even when the variation may be such as to result in discontinuance. A shut-down by a requirements buyer for lack of orders might

But that measurement requires a stable benchmark. Under *Cadillac Rubber*, there is none. If the buyer's only firm obligation is to purchase one unit, then an order of two units is 100% above that floor, and an order of 100,000 units is ten million percent above it – yet both fall within the contractual range. Conversely, if the buyer had been ordering 50,000 units and suddenly drops to ordering two, that dramatic reduction also falls within the terms of the contract because the buyer is obligated to buy only one. The disproportionality check cannot function when the quantity term itself spans from a single unit to the buyer's entire requirements, because virtually any order—no matter how large or how small – can be characterized as falling within the contractual range. In this way, *Cadillac Rubber*'s one-unit floor renders UCC § 2-306(1)'s safeguard a dead letter, confirming its irreconcilable conflict with the structural framework that *Airboss* demands.

## III. *Airboss*'s ruling adheres to plain language of the UCC.

UCC § 2-201(1)'s second sentence is decisive: a contract for the sale of goods "is not enforceable … beyond the quantity of goods shown in the writing." MCL 440.2201(1). *Airboss* instructs courts to treat that sentence as an enforceability cap, not merely a formation threshold. Section 2-201 prohibits enforcement of a contract beyond the quantity expressly stated in writing. Accordingly, *Airboss* does not permit a court to enforce a requirements contract against a seller for quantities the buyer has not committed to purchase.

This is not a quibble about adequacy of consideration. *Airboss* distinguishes the existence of consideration from the scope of enforceability. A contract supported by consideration is

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> be permissible when a shut-down merely to curtail losses would not. The essential test is whether the party is acting in good faith.

MCL 440.2306, cmt 3. Whether the quantity range at issue *here* – i.e., approximately 65%–100% of FCA's requirements – is within the bounds of "good faith" and "reasonable elasticity" is the essence of *Question Presented (2)*, on which the Business Law Section takes no position.

enforceable, but only to the stated quantity. It cannot be used to impose an effectively unlimited supply obligation on the seller up to 100% of the buyer's needs unless it qualifies as a requirements contract under the UCC.

## IV. To the Extent *Cadillac Rubber* Conflicts with *Airboss*'s Set-Share Principle, It Is Overruled by Implication.

Given *Airboss's* controlling articulation of the UCC quantity rule and its definition of a requirements contract as requiring a "set share" of the buyer's needs, *Cadillac Rubber* cannot be coherently maintained. It allows a buyer to promise a minimal floor of one unit while retaining discretion over the remainder of its needs and then treats the seller's obligation as "whatever the buyer orders," effectively creating two different quantity terms. *Airboss* rejects both premises. Michigan courts must follow the Supreme Court when a Court of Appeals decision conflicts. The proper reading is that *Airboss* rendered *Cadillac Rubber's* requirements-contract holding untenable. The law is now settled that a requirements contract *must* state a "set share" of the buyer's needs and that the written quantity caps enforceability for both parties; where the writing lacks a mutually binding quantity term, the arrangement is enforceable only on a release-by-release basis.

Accordingly, this Court should clarify that, to the extent *Cadillac Rubber* conflicts with *Airboss*'s "set share" principle, it is overruled by implication. The Court should reaffirm that under UCC §§ 2-201 and 2-306 (MCL 440.2201, 440.2306), a requirements contract exists only when the writing specifies a "set share" of the buyer's needs; otherwise, enforceability is limited to firm quantities accepted on a release-by-release basis.

Dated: March 16, 2026

Michael K. Molitor, Chair
Business Law Section of the
State Bar of Michigan

Respectfully Submitted,

/s/ Jordan Segal
Jordan Segal (P79897)
Cameron M. Collins (P88742)
Jennifer Consiglio (P68496)
Michael K. Molitor (P51779)
Judy B. Calton (P38733)
Michael Khoury (P34413)
Douglas L. Toering (P34329)
Justin G. Klimko (P31619)
William H. Horton (P31567)

Attorneys for *Amicus Curiae*
Business Law Section of the
State Bar of Michigan

**CERTIFICATE OF COMPLIANCE**

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/s/ Jordan Segal
Jordan Segal (P79897)
Attorney for *Amicus Curiae*

**CERTIFICATE OF SERVICE**

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/s/ William H. Horton
William H. Horton (P31567)
Attorney for *Amicus Curiae*

/s/ Jordan Segal
Jordan Segal (P79897)
Attorney for *Amicus Curiae*