

**UNIFORM COMMERCIAL CODE COMMITTEE**  
**REPORT PREPARED FOR THE DECEMBER 3, 2005 COUNCIL MEETING**  
**BUSINESS LAW SECTION**

**1. Next Scheduled Meeting of the Committee**

There is no meeting of the Committee presently scheduled.

**2. Council Approval**

There are no matters pertaining to the Committee that require Council approval.

**3. Membership**

I have requested the Section to canvass all Section members for the following purposes:

- (a) With respect to existing members of the UCC Committee, to update their contact information. The most current list of members dates from 2004.
- (b) With respect to non-Committee members, to invite them to join the Committee.

**4. Accomplishments Toward Committee Objectives**

I am keeping abreast of current developments which will be transmitted to the Committee members and other interested parties on a periodic basis.

**5. Meetings and Programs**

I do not presently anticipate any need for future programs.

**6. Publications**

I have at least six articles committed for the next issue of the Michigan Business Law Journal by members of the Committee. These articles must be submitted by March 31, 2006.

**7. Legislative/Judicial Administrative Developments**

a. *In re Exemplar Manufacturing Co.*, 2005 WL 2605612 (Bankr. E.D. Mich. Oct. 14, 2005). After the debtor filed a chapter 11 petition, the debtor and its non-debtor parent filed an adversary complaint seeking to recover amounts allegedly owed from the debtor's customer pursuant to a resourcing agreement. The resourcing agreement required the customer to pay the debtor a set amount for each day that the customer failed to resource the production of certain automotive parts. The Bankruptcy Court for the Eastern District of Michigan determined that, according to both Michigan common law and section 2-718 of the Michigan Commercial Code,

the amount at issue was an unenforceable liquidated damages provision. Noting that liquidated damages are enforceable only if they are reasonable, the court found that the provision required payment of an amount well in excess of any actual damages. According to the debtor, the damages clause was not a penalty, but instead was simply an incentive to resource production. The district court disagreed, and found that the clause violated Michigan's overriding principle of just compensation because the amount was unreasonably high and therefore unenforceable. The district court also found no merit to the debtor's promissory estoppel argument because, among other things, promissory estoppel is an equitable doctrine which, consistent with just compensation, requires that damages incurred as a result of a breach of promise be compensatory, not punitive.

b. *Acemco, Inc. v. Olympic Steel Lafayette, Inc.*, Case No. 256638 (October 27, 2005) (unpublished opinion). This decision involved a contractual dispute between a manufacturer of metal stampings in the auto industry, Acemco, and a steel service center that provides steel coils, Olympic. On Olympic's appeal from a judgment entered by the Muskegon County Circuit Court in favor of Acemco, the plaintiff, the Michigan Court of Appeals affirmed in part, reversed in part and remanded the action for entry of summary disposition in favor of Olympic.

The primary issue on appeal was whether a contract between Acemco and Olympic for the sale of goods was enforceable under Article 2 of the UCC. The supply contract involved did not contain a term specifying the quantity of goods to be delivered by Olympic to Acemco and was determined not to constitute a requirements contract under UCC § 2-306. Summarizing its decision on this issue, the Court of Appeals declared as follows:

Because there is no discernable quantity included in the four corners of the [contract], and because Acemco offered no admissible testimony providing both an admission of a contract for the sale of goods and an admitted quantity, the trial court erred when it denied Olympic's motion for summary disposition.

c. The Michigan Bankers Association Advocacy Report dated October 7, 2005, contains the following summary of new Public Act 162 enacted by the Michigan Legislature and recently signed into law by Governor Granholm:

HB 4484, the bill to clean up the mobile home lien statute, was signed into law by the Governor as PA 162 of 2005. Recall that this legislation was sponsored by the MBA to fix the 2003 statute that validated liens on mobile homes if a) the mobile home is permanently affixed to real estate, and b) the lender filed a mortgage with the Register of Deeds (rather than noting a security interest on the mobile home's title). Subsequent court decisions failed to recognize the 2003 act's language that was intended to save those existing mortgages. PA 162 makes explicit that those mortgages are valid ways to perfect the lender's security interest.

**8. Miscellaneous**

Nothing else to report.

Respectfully submitted,

Patrick E. Mears