

## COA Opinion: Payment on an open account for the sale of goods is subject to the 4 year limitation period of the UCC.

8. June 2011 By Kristina Araya

In *Fisher Sand and Gravel Co v Neal A Sweebe, Inc*, No. 297156, Judge Owens authored the majority opinion in this case of first impression, holding that the plaintiff's claim for payment on an open account relating to the sale of goods was barred by the four year limitations period in the Uniform Commercial Code (UCC). Judge O'Connell [dissented](#), and would apply the general 6 year limitations period that applies to actions for breach of contract.

In this case, the plaintiff provided the defendant with concrete supplies, and the defendant periodically made payments against his account with the plaintiff. The defendant became delinquent on the account. More than four years after the last payment was made by the defendant, the plaintiff brought a claim against the defendant for nonpayment on the open account. The trial court granted summary disposition to the defendant based on the four year limitations period for bringing claims under the UCC.

The majority of the Court of Appeals agreed that the four year limitations period in the UCC applied to the transaction because the UCC governs the sale of goods, and the open account was related to the sale of goods. The majority reasoned that the statutes setting the limitations periods must be read together and when they conflict, the more specific statute governs the transaction. Here, the UCC is the more specific statute and accordingly, it governed the transaction. The majority acknowledged that an open account is treated as a new promise that is distinct from the underlying transaction, but concluded there was no established authority holding that an account for the sale of goods is not subject to the UCC.

In his dissent, Judge O'Connell concluded that the general six year limitation period for bringing an action in for breach of contract should apply to the transaction. Judge O'Connell reasoned that in Michigan an open account triggers a new obligation that is distinct from the sale of goods and is therefore not governed by the UCC. Further, Judge O'Connell notes that there is no language in the UCC that can be interpreted to abrogate Michigan common law regarding open accounts.