

# Plain English Subcommittee on Contracts

By George H. Hathaway

The goal of the Subcommittee on Contracts is to promote plain English in contracts that are written in the actual practice of law.<sup>1</sup> To do this, the subcommittee finds and gives Clarity Awards to clearly written consumer-finance contracts, construction contracts, sales-of-goods contracts, sales-of-services contracts, employment contracts, investment contracts, and insurance contracts. See Figure 1 for a list

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

of Clarity Awards that we have previously given, and a want list for future awards.

Each of the seven types of contracts is written by a different group of lawyers. And within each type there are usually one or two widely used form contracts, each written by a small group of lawyers. Consequently, to eliminate legalese in contracts, we must do four things. First, divide contracts into seven separate types. Second, identify the people who influence the style and clarity of each type. Third, identify the people who have the interest, ability, and courage to eliminate legalese and write in plain English. And fourth, join forces with them to work in an organized way from within the system to eliminate legalese in each of the seven distinctly different types of contracts.

## Members of Subcommittee on Contracts

Subcommittee members are listed in Figure 2.

With this subcommittee we hope to bridge the gap between the educational materials on plain English at Wayne State and Thomas Cooley Law Schools and contracts written in the actual practice of law by seven well-defined groups of lawyers. We think we can help bridge the gap between educational materials and actual contracts with our approach.

## Michigan Activities

Our activities in the seven types of contracts are as follows:

1) **Consumer-finance contracts.** We want to make a list of the 10 largest financial-service companies in Michigan (First Chicago NBD Bank, Comerica, Michigan National Bank, First of America, Old Kent, Standard Federal, First Federal of Michigan, Franklin Bank, Huntington Banks, and Republic Bancorp) and then try to find a clearly written car-loan agreement from one of them.

Figure 1. Clarity Awards and Want List for Contracts

Contracts	Clarity Awards		Want List
Type of Document	(Year) and Document	Written By	We want to find Clarity Award documents written according to Felsenfeld and Siegel, <i>Writing Contracts in Plain English</i> from:
1. consumer-finance contracts	(95) NBD Bank credit-card and disclosure statement	Good, McCormick, Mulder	car-loan agreements of financial-services companies
2. construction contracts			construction contracts of Michigan Association of Home Builders
3. sales-of-goods contracts	(96) Ford Motor Credit motor-vehicle lease	Aitken, Cumming, Kelly, Mossburg, Secrest, Szuba, Watkins	car-sales agreements of Michigan Automotive Dealers Association
4. sales-of-services contracts	(97) Chrysler consulting contract	Daly, Robinson, Kohler	attorney-fee agreements
5. employment contracts	(95) forms in <i>Michigan Closely Held Corporations</i>	Kasischke	union contracts
6. investment contracts	(97) Bell Atlantic-NYNEX proxy statement/prospectus (97) Ford proxy statement	Gibson, McConville Rintamaki, Cropsey, Lamping, Ghilardi	prospectuses and proxy statements written by Michigan companies
7. insurance contracts	(94) Michigan statute requiring plain English in insurance contracts (94) Michigan Blue Cross-Blue Shield health insurance certificates and riders	Rep. Ciaramitaro Varnier	

Figure 2. Members of Subcommittee on Contracts

1. Consumer-finance contracts	Paul Steinkraus	Ford Motor Credit
2. Construction contracts	Marty Burnstein	Private practitioner
3. Sales-of-goods contracts		
4. Sales-of-services contracts	David Daly	Chrysler Corporation
5. Employment contracts		
6. Investment contracts	John Rintamaki	Secretary of Ford Motor Company
7. Insurance contracts	Lisa Varnier	Michigan Blue Cross-Blue Shield

2) **Construction contracts.** We want to make a list of the 10 largest home builders in Michigan and then try to find a clearly written home-construction contract from one of them.

3) **Sales-of-goods contracts.** Michigan is the automotive state. Therefore, the most appropriate sales-of-goods contract is the car-sales contract. When you buy a car, you should be able to obtain a contract written in plain English. But all car-sales contracts are written from the same form—the Michigan Automotive Dealers Association Car Sales Contract. And this form is not written in plain English. Ten years ago we suggested that the form be revised. We will try again.

4) **Sales-of-services contracts.** We have reviewed the ICLE Attorney Fee Agreements book and find that the forms are still written in language that needs to be made more clear. The same can be said for the attorney-fee agreement that the state bar representative assembly reviewed several years ago. Therefore, we want to make a list of the 10 largest law firms in Michigan and then try to find a clearly written attorney-fee agreement from one of them.

5) **Employment contracts.** We want to make a list of the 10 largest labor unions

in Michigan and then try to find a clearly written union contract from one of them.

6) **Investment contracts.** We want to make a list of the 10 largest Michigan companies and try to get all of them to participate in the U.S. Securities and Exchange Commission's program to voluntarily write their prospectuses in plain English. See federal activities below.

7) **Insurance contracts.** In 1990 the Michigan Legislature passed an amendment that requires plain English in insurance contracts (1990 P.A. 305, MCL 500.2236; MSA 24.12236). This bill, sponsored by Rep. Nick Ciaramitaro, applies to all insurance policies (new and revised) after January 1, 1992. This plain English requirement is enforced by one of the groups in the Michigan Insurance Bureau.

## Federal Activities

Our December 1996 column discussed the enlightened work that Arthur Levitt, chair of the U.S. Securities and Exchange Commission, and Nancy Smith and Ann Wallace of the SEC are doing in plain English in investment contracts. In May, we gave a 1997 Clarity Award to Mr. Levitt for his ongoing efforts. We are now coordinating our work with the SEC to promote plain English in investment contracts with as many Michigan companies as possible. And we are checking with them on next year's Clarity Awards.

## Legal-Writing Seminars

Legal-writing seminars and workshops given by consultants help to bridge the gap between educational materials and actual

practice. Bryan Garner, a legal writing author and consultant from Dallas, Texas, gives his LawProse, Inc. seminars on legal writing to thousands of lawyers in the United States each year. Over the years we have published many of Mr. Garner's articles in this column. And we gave three 1997 Clarity Awards (for revisions of the Federal Rules of Appellate Procedure, and for the Ford proxy statement and Chrysler consulting contract) to legal documents that were either written by Mr. Garner or influenced by his LawProse seminars. Michigan contracts that have been influenced by Mr. Garner and his seminars will be a fertile source for many of our future Clarity Awards.

## Sample Populations

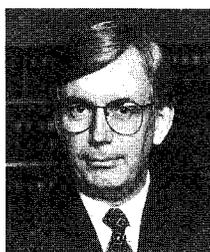
In our previous articles we identified the largest metropolitan areas in the largest states and English-speaking provinces in the United States, Australia, and Canada. If we now identify the biggest bank, home builder, auto dealer, law firm, union, investment banker, and insurance company in each of these metropolitan areas, we will have a sample population from which we can try to obtain sample contracts. We can then compare the clarity of Michigan contracts with the clarity of these sample contracts.

## Conclusion

We have developed a plan to help bridge the gap between educational materials and seven specific types of contracts. Now we need to carry out that plan. ■

## Footnote

1. *The Word from the Securities and Exchange Commission: Put It in Plain English*, 75 Mich B J 1314 (December 1996); *Motor Vehicle Leases*, 74 Mich B J 1284 (December 1995); *Plain English in Consumer Finance and Other Contracts*, 73 Mich B J 956 (September 1994); *Buddhists, Running, and Plain Language in Calgary*, 73 Mich B J 696 (July 1994); *Plain English in Insurance Papers*, 73 Mich B J 196 (February 1994); *Whither Whereas—The Legal Implications of Recitals*, 67 Mich B J 634 (July 1988); *Plain English in Michigan Insurance Policies*, 65 Mich B J 813 (August 1986); *Business Agreements in Letter Form*, 65 Mich B J 212 (February 1986).



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