STATE OF MICHIGAN
IN THE SUPREME COURT

LaFONTAINE SALINE, INC., d/b/a LaFONTAINE CHRYSLER JEEP DODGE RAM,

Plaintiff-Appellee,

vs.

CHRYSLER GROUP, LLC, and IHS AUTOMOTIVE GROUP, LLC d/b/a CHRYSLER JEEP OF ANN ARBOR,

Defendants-Appellants.

Docket Nos. 146722, 146724

Court of Appeals No: 307148

Washtenaw County Circuit Court
Case No: 10-001329-CZ

BRIEF OF THE ALLIANCE OF AUTOMOBILE MANUFACTURERS AS AMICUS CURIAE SUPPORTING DEFENDANTS-APPELLANTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES:

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES---Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

STATEMENT OF INTEREST

The Alliance of Automobile Manufacturers is an association of twelve major vehicle manufacturers, which collectively account for 77% of all car and light truck sales in the United States. Its members include the BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Corporation, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America, and Volvo Cars North America. The Alliance is the leading advocacy group for the automobile industry and has participated as amicus curiae in state and federal courts across the country in cases presenting issues of importance to its members.

The Alliance is interested in this case because the decision below imposes heavy burdens on Alliance members doing business in Michigan. In breaking from this Court's precedent, the Court of Appeals has undermined Alliance members' settled expectations and hamstrung their ability to respond to changing business needs. The Court of Appeals should be reversed.

SUMMARY OF ARGUMENT

The Court of Appeals' analysis in this case should have been straightforward. Under the longstanding presumption against retroactivity, statutes are " 'presumed to operate prospectively unless the contrary intent is clearly manifested.' " *Frank W Lynch & Co v Flex Techs, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001) (citation omitted). When the Michigan Legislature amended the Michigan Motor Vehicle Dealers Act in 2010 to enlarge the territory in which existing dealers are protected from new competition, it did not clearly manifest any intent for the amendment to apply retroactively. The 2010 amendment therefore did not affect Chrysler Group's pre-existing contractual relationship with LaFontaine Saline. Chrysler had no obligation to formally notify LaFontaine of its intent to appoint a new dealer in Ann Arbor, and LaFontaine has no right to protest that appointment.

Instead of hewing to this Court's precedents, however, the Court of Appeals completely disregarded them. The "central issue," in the court's view, was not whether the 2010 amendment applied retroactively to alter the 2007 contract between Chrysler and LaFontaine, but rather whether Chrysler and the *new dealer* had entered into a dealer agreement before the effective date of the 2010 amendment. (Court of Appeals Opinion, p 5.) Concluding that they had not, the Court of Appeals then determined there was no need for any retroactivity analysis. As it explained, LaFontaine could invoke the 2010 amendment because "any future dealer agreement" between Chrysler and the new dealer will "necessarily be executed" after the amendment's effective date. (Court of Appeals Opinion, p 6.)

The Court of Appeals' decision was wrong. Retroactivity concerns cannot be avoided simply by pointing to some *other* conduct post-dating the law's enactment. Under this Court's longstanding precedent, the presumption against retroactivity must be applied whenever a new law would alter pre-existing contractual arrangements. That is precisely why the presumption applies here: LaFontaine seeks to use the 2010 amendment to alter its 2007 contractual arrangement with Chrysler. No other interpretation is possible because retroactive application of the 2010 Amendment would violate the Contract Clauses of the Michigan Constitution and the United States Constitution.

The Court of Appeals' failure to apply the presumption under these circumstances was contrary to this Court's settled precedent. This Court should accordingly reverse the judgment below and restore stability and predictability to an industry of vital importance to Michigan's economy.

ARGUMENT

I. THE 2010 AMENDMENT DOES NOT APPLY TO PRE-EXISTING FRANCHISE AGREEMENTS.

A. The Presumption Against Retroactivity Compels The Application Of The Pre-2010 Statute.

The principal issue in this case is narrow but important: When does a new statute apply to pre-existing contracts? Chrysler and LaFontaine entered into a dealer agreement in 2007. At the time, both parties knew that the LaFontaine appointment would affect Chrysler's ability to appoint additional dealers within a six-mile radius. But Chrysler deemed that to be an acceptable cost of doing business. LaFontaine now relies on a subsequently enacted statute to expand that protected territory beyond what it had originally received as part of its bargain with Chrysler. The question is whether the Michigan Legislature intended to retroactively alter the agreement Chrysler and LaFontaine struck in 2007.

A longstanding principle of statutory interpretation provides the answer. Courts have long refused to give retroactive effect to new legislation, absent a clear indication of a contrary legislative intent. As the U.S. Supreme Court has noted, this "presumption against retroactive legislation" is "deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf v USI Film Products*, 511 US 244, 265 (1994); *see also, e.g.*, *Dash v Van Kleeck*, 7 Johns. *477, *503 (NY, 1811) (Kent, CJ) ("It is a principle of the English common law, as ancient as the law itself, that a statute, even of its omnipotent parliament, is not to have a retrospective effect."). The presumption is founded on "[e]lementary considerations of fairness"—particularly the notion that "settled expectations should not be lightly disrupted." *Landgraf*, p 265; *see also Kaiser Aluminum & Chem Corp v Bonjorno*, 494 US 827, 856 (1990)

(Scalia, J, concurring) ("The presumption of nonretroactivity . . . gives effect to enduring notions of what is fair, and thus accords with what legislators almost always intend.").

This Court adheres to the same presumption. Indeed, it has described the presumption as "strong," and has emphasized that statutes must be construed to operate prospectively unless the legislation contains a "clear expression" of the contrary intent. *Frank W Lynch & Co*, p 583; *accord Johnson v Pastoriza*, 491 Mich 417, 429; 818 NW2d 279 (2012); *Brewer v AD Transp Express, Inc*, 486 Mich 50, 56; 782 NW2d 475 (2010). As the Court has explained, "a requirement that the Legislature make its intention clear 'helps ensure that [the Legislature] itself has determined that the benefits of retroactivity outweigh the potential for disruption or unfairness.' " *Frank W Lynch & Co*, p 587 (quoting *Landgraf*, p 268). This protection is especially important "when a new statutory provision affects contractual rights—an area 'in which predictability and stability are of prime importance.' " *Id.* (quoting *Landgraf*, p 271); *see also id.*, p 583 (presumption against retroactivity has special force when "retroactive application of a statute would impair vested rights, create a new obligation and impose a new duty, or attach a disability with respect to past transactions").

The strong presumption against retroactivity should have controlled the outcome of this case. The key question is whether the Legislature "clearly" signaled an intent for the 2010 Amendment to apply retroactively. *Id.*, p 583. If it did not, the amendment cannot be applied to agreements that were executed before its effective date. *See id.*, p 588.

There is no such clear signal. To begin with, the Legislature did not include any express language regarding retroactivity. *See* 2010 PA 139. As this Court has held, omissions of that sort are instructive: "[T]he Legislature has shown on several occasions that it knows how to make clear its intention that a statute apply retroactively." *Frank W Lynch & Co*, p 584; *see also*

Brewer, p 56. A statute regulating farm equipment franchises, for example, expressly applies to "all agreements, contracts, sales agreements, security agreements, or franchise agreements written or implied in force and effect on or after January 2, 1990." MCL 445.1460. Other statutes contain similarly explicit retroactivity language. *See, e.g.*, 2007 PA 105 ("This amendatory act is curative and shall be retroactively applied * * *."); 2004 PA 46 ("This act is retroactive and is effective October 1, 2003."). The failure to include such language in the 2010 Amendment is powerful evidence that the Legislature intended for the amendment to apply prospectively only.

The textual silence is particularly meaningful in this case because the Legislature has included retroactivity language in other amendments to the Motor Vehicle Dealers Act. For example, when the Legislature revised that Act in 1998, it expressly provided that the amendments would "apply to agreements in existence on the effective date of this section and to agreements entered into or renewed after the effective date of this section." 1998 PA 456, MCL 445.1582a. Likewise, a provision enacted *the same day* as the 2010 Amendment expressly applies "[i]f a new motor vehicle dealer is a party to a dealer agreement on the effective date of the amendatory act that added this subdivision." 2010 PA 141, MCL 445.1574(1)(x).

These provisions all demonstrate that the Legislature is perfectly capable of indicating that an amendment to the Motor Vehicle Dealers Act should apply to pre-existing franchise agreements. It chose not to do so in the 2010 Amendment. Where, as here, the Legislature knows how to say something but chooses not to, its decision must be given effect. *See Popma v Auto Club Ins Ass'n*, 446 Mich 460, 475; 521 NW2d 831 (1994). The 2010 Amendment should have been construed to apply prospectively only.

That conclusion is confirmed by the overwhelming weight of judicial authority. Dozens of courts around the country have considered whether amendments to state motor vehicle dealer laws operate retroactively. In practically every case—including several cases involving the Michigan Motor Vehicle Dealers Act—the courts have concluded that the amendments apply prospectively only.[1] Indeed, the Sixth Circuit recently held that the very amendment at issue here does not apply retroactively. *See Kia Motors America, Inc v Glassman Oldsmobile Saab Hyundai, Inc*, 706 F3d 733 (CA 6, 2013).

Taken together, the cases cited above reveal a consistent judicial skepticism of claims that state motor vehicle dealer laws should apply retroactively. That skepticism makes sense. As this Court has emphasized, " 'predictability and stability are of prime importance' " when contract rights are at issue. *Frank W Lynch & Co*, p 587 (citation omitted). Car manufacturers must be able to plan for the future when they appoint a new dealer. When a manufacturer establishes a new dealership in Ypsilanti, for example, it does so with the existing anti-

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[1] *See, e.g., Kia Motors America, Inc v Glassman Oldsmobile Saab Hyundai, Inc*, 706 F3d 733 (CA 6, 2013) (Michigan law); *Joe Dwyer v Jaguar Cars*, 167 Mich App 672; 423 NW2d 311 (1988) (per curiam) (Michigan law); *Dale Baker Oldsmobile v Fiat Motors of N. Am, Inc*, 794 F2d 213, 220 (CA 6, 1986) (Michigan law); *Bob Tatone Ford, Inc v Ford Motor Co*, 197 F3d 787, 792 (CA 6, 1999) (Ohio law); *Chrysler Motors Corp v Thomas Auto Co*, 939 F2d 538, 541-543 (CA 8, 1991) (Arkansas law); *Ace Cycle World, Inc v American Honda Motor Co*, 788 F2d 1225, 1228 (CA 7, 1986) (Illinois law); *Scuncio Motors, Inc v Subaru of New England, Inc*, 715 F2d 10, 13 (CA 1, 1983) (Rhode Island law); *Buggs v Ford Motor Co*, 113 F2d 618, 621 (CA 7, 1940) (Wisconsin law); *In re American Suzuki Motor Corp*, 494 BR 466, 477-81 (Bkrtcy CD Cal, 2013) (Florida law); *Miller Auto Corp v Jaguar Land Rover N Am, LLC*, No 09-1291, 2010 WL 3417975, p *7 (D Conn, Aug 25, 2010) (Connecticut law); *H-D Michigan, LLC v Sovie's Cycle Shop, Inc*, 626 F Supp 2d 274, 278 & n5 (NDNY, 2009) (New York law); *Pascale Serv Corp v Int'l Truck & Engine Corp*, 558 F Supp 2d 217, 221-222 (DRI, 2008) (Rhode Island law); *Nissan N Am, Inc v Royal Nissan, Inc*, 794 So 2d 45, 48 (La Ct App, 2001) (Louisiana law); *In re Kerry Ford, Inc*, 666 NE2d 1157, 1160-61 (Ohio Ct App, 1995) (Ohio law); *Stamps v Ford Motor Co*, 650 F Supp 390, 399 (ND Ga, 1986) (Georgia law); *Northwood AMC Corp* v *American Motors Corp*, 423 A2d 846, 849 (Vt, 1980) (Vermont law); *Yamaha Parts Distr, Inc v Ehrman*, 316 So2d 557, 560 (Fla, 1975) (Florida law); *Hein-Werner Corp v Jackson Indus, Inc*, 306 NE2d 440, 443 (Mass, 1974) (Massachusetts law); *Clifford Jacobs Motors, Inc v Chrysler Corp*, 357 F Supp 564, 572 (SD Ohio, 1973) (Ohio law).

encroachment laws in mind. The manufacturer knows it will have limited expansion options within a six-mile radius of the new dealership; yet it may decide that the new dealership is justified because it will have the option of appointing a second dealer in Ann Arbor when the time is right. A retroactive expansion of the first dealer's protected territory would unsettle those expectations and undermine the manufacturer's careful planning.

Moreover, because incumbent dealers enjoy what one court has aptly described as an "infinite" franchise that is practically impossible to terminate, *Dunkin' Donuts of America, Inc v Middletown Donut Corp*, 100 NJ 166, 185; 495 A2d 66 (1985); *see* MCL 445.1567(1)(c), retroactive expansions of anti-encroachment territories can permanently hamstring manufacturers' ability to plan for, and respond to, migration patterns and other demographic changes. There are 636 new-car dealerships in Michigan (*see* Nat'l Auto Dealers Ass'n, NADA Data 2013, p 5), each of which currently has the ability to object to new competitors within a 113-square mile zone. An expansion of each dealer's zone by an additional 140 square miles would dramatically limit manufacturers' ability to respond to changing business needs. The prospect of such unforeseen legal burdens further counsels against retroactive application of the 2010 Amendment—especially in the absence of *any* legislative suggestion that retroactive application was intended or appropriate. *See Vartelas v Holder*, 132 S Ct 1479, 1491 (2012) ("Although not a necessary predicate for invoking the antiretroactivity principle, the likelihood of reliance on prior law strengthens the case for reading a newly enacted law prospectively.").

The statutory text, a venerable canon of construction, and the overwhelming weight of judicial authority thus point in the same direction: The 2010 Amendment to the Motor Vehicle Dealers Act must be construed to apply only to agreements executed after the amendment's effective date.

B. Application Of The 2010 Amendment Would Retroactively Alter The Agreement Between Chrysler And LaFontaine.

Rather than applying this Court's settled retroactivity jurisprudence, however, the Court of Appeals skipped over the question of retroactivity altogether. The Court of Appeals essentially concluded that the presumption against retroactivity governing Chrysler's contract with LaFontaine was irrelevant because Chrysler had not yet entered into a formal Sales and Service Agreement with the *new* dealer. (Court of Appeals Opinion, p 6.) According to the Court of Appeals, there is no retroactivity problem because that agreement "will necessarily be executed after [the 2010 Amendment] took effect." (*Id.*) LaFontaine expands on this argument in its briefs before this Court. Retroactivity is "not the issue," it claims, because "the 2010 Amendment is being applied prospectively to *the final future act*: the date on which IHS and Chrysler enter into a Dealer Agreement for the sale of Dodge vehicles." LaFontaine Br in Case No 146724, p 15 (emphasis added). As LaFontaine sees things, application of the 2010 amendment would not affect past transactions at all.

That is wrong. The presumption against retroactivity does not turn on whether a case involves *some* post-enactment conduct. Practically every case would meet that requirement. Instead, courts—including this Court—apply Justice Story's "classic formulation" to determine whether a law falls within the scope of the presumption against retroactivity. *Vartelas v Holder*, 132 S Ct 1479, 1486 (2012). LaFontaine acknowledges as much. *See* LaFontaine Br in Case No 146724, pp 14-15. According to the Story formulation, "[a] retrospective law is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past." *Hughes v Judges' Retirement Bd*, 407 Mich 75, 85; 282 NW2d 160 (1979); *accord Barber v Barber*, 327 Mich 5, 11; 41 NW2d 463 (1950); *Weller v Wheelock*, 155 Mich

698, 704; 118 NW 609 (1908); *Society for Propagation of Gospel v Wheeler*, 22 F Cas 756, 767 (No 13,156) (CCDNH, 1814) (Story, J). The presumption thus applies whenever a new law would unsettle past "transactions and considerations."

That is precisely why it applies in this case. Chrysler and LaFontaine assigned a value to, bargained for, and mutually agreed upon a particular set of rights and obligations in 2007, three years before the amendment. LaFontaine now seeks to alter that contractual arrangement by invoking a subsequently enacted law. Anti-retroactivity concerns are "most pressing" in this context, for " 'predictability and stability are of prime importance' " when contract rights are at issue. *Republic of Austria v Altmann*, 541 US 677, 693 (2004) (quoting *Landgraf*, p 271). Indeed, this Court has emphasized that the general rule favoring prospective application of new laws is "especially true when giving a statute retroactive operation will interfere with an existing contract." *Hansen-Snyder Co v General Motors Corp*, 371 Mich 480, 484; 124 NW2d 286 (1963); *see also Nash v Robinson*, 226 Mich 146, 149; 197 NW 522 (1924) ("Courts, as a rule, are loath to give retroactive effect to statutes, and this is especially so when, by so doing, it would disturb contractual or vested rights.").

The date of the execution of the existing franchise agreement—not the date of execution of another agreement with a later-arriving dealer—is thus the relevant benchmark for determining whether a statute affecting the agreement would have retroactive effect. This Court's decisions confirm as much. In *Frank W Lynch & Co*, for example, the Court applied the presumption against retroactivity because the statute at issue "would substantially alter the nature of agreements concerning payment of sales commissions that were *entered into* before the act's effective date." *Frank W Lynch & Co*, p 588 (emphasis added). And in *Byjelich v John Hancock Mutual Life Insurance Co*, 324 Mich 54, 60-61; 36 NW2d 212 (1949), the Court

refused to apply a new law to a pre-existing insurance agreement, even though the challenged conduct (assignment of the insurance policy) occurred after the statute was enacted. The Sixth Circuit has also adhered to this understanding in a number of motor vehicle franchise disputes: In case after case, the Sixth Circuit has said that the presumption against retroactivity applies whenever the new law would "affect[ ] [the manufacturer's] rights under a contract that predates" the new law. *Kia Motors America v Glassman Oldsmobile Saab Hyundai*, p 740; *accord Bob Tatone Ford, Inc v Ford Motor Co*, 197 F3d 787, 792 (CA 6, 1999); *Dale Baker Oldsmobile v Fiat Motors of North America*, 794 F2d 213, 220-21 (CA 6, 1986).

In the teeth of all this authority, LaFontaine relies heavily on a case decided by the Court of Appeals over thirty years ago: *Anderson's Vehicle Sales v OMC-Lincoln*, 93 Mich App 404; 287 NW2d 247 (1980). *See* LaFontaine Br in Case No 146724, pp 17-18. In *Anderson's*, the Court of Appeals held that an amendment to the Motor Vehicle Dealers Act applied to pre-existing franchise agreements. But that reasoning was flawed from the outset, and the Sixth Circuit expressly disapproved it in *Dale Baker Oldsmobile v Fiat Motors of North America*, 794 F2d 213 (CA 6, 1986), when it held that a similar amendment did *not* apply to pre-existing franchise agreements. The Sixth Circuit declined to follow *Anderson's*, concluding that the decision was "contrary to" this Court's retroactivity jurisprudence. *Dale Baker Oldsmobile*, p 218; *see also Kia Motors America*, p 741 n6 (characterizing *Anderson's* as not "persuasive"); *McAleer Buick-Pontiac Co v GM Corp*, 95 Ill App 3d 111, 113; 419 NE2d 608 (1981) (disagreeing with *Anderson's*); *Cloverdale Equipment Co v Manitowoc Eng'g Co*, 964 F Supp 1152, 1164 (ED Mich, 1997) (describing *Anderson's* as "questionable precedent"). This Court's subsequent retroactivity decisions like *Frank W Lynch & Co* have confirmed the correctness of

the Sixth Circuit's holding. It is time for the Court to repudiate *Anderson's* and end its reign of confusion.

The Court of Appeals' effort to circumvent the presumption against retroactivity sharply conflicts with governing precedent. Chrysler's contract rights cannot be retroactively diminished without a clear manifestation of legislative intent. Because there is no such manifestation here, the 2010 amendment cannot be applied to Chrysler's agreement with LaFontaine. The Court of Appeals' contrary decision conflicts with this Court's precedent. It will also cause manifest injustice by thwarting the settled expectations of all car manufacturers doing business in Michigan. This Court should accordingly reverse the Court of Appeals' decision.

II. RETROACTIVE APPLICATION OF THE 2010 AMENDMENT WOULD VIOLATE THE CONTRACTS CLAUSES OF THE MICHIGAN CONSTITUTION AND THE UNITED STATES CONSTITUTION.

There is a second, independent problem with the Court of Appeals' holding: Retroactive application of the 2010 Amendment would violate the Contract Clauses of the Michigan Constitution and the United States Constitution.

There is no need to reach this issue if the Court construes the amendment to apply prospectively only, as it should. *See Kia Motors America*, p 741 (giving Michigan Motor Vehicle Dealer Act prospective effect in order to avoid "a significant constitutional question"); *Dale Baker Oldsmobile*, p 221 (same); *Scuncio Motors v Subaru of New England, Inc*, 715 F2d 10, 13 (CA 1, 1983) (same for Rhode Island motor vehicle dealer law); *Buggs v Ford Motor Co.*, 113 F2d 618, 621 (CA 7, 1940) (same for Wisconsin motor vehicle dealer law). But in the event the Court construes the 2010 Amendment to apply retroactively, the Contract Clauses would still mandate reversal of the Court of Appeals' judgment.

Both the Michigan Constitution of 1963 and the United States Constitution prohibit the state from enacting any "law impairing the obligation of contracts." US Const, art I, § 10; *see also* Const 1963, art I, § 10. Those two provisions, which are interpreted in tandem, *see In re Certified Question* (*Fun 'N Sun RV, Inc v Michigan*), 447 Mich 765, 777 n13; 527 NW2d 468 (1994), serve as a " 'constitutional bulwark in favor of personal liberty and private rights.' " *Toledo Area AFL-CIO Council v Pizza*, 154 F3d 307, 322 (CA 6, 1998) (quoting *The Federalist* No. 44).

The threshold inquiry in any Contract Clause challenge is "whether the change in state law has 'operated as a substantial impairment of a contractual relationship.' " *General Motors Corp v Romein*, 503 US 181, 186 (1992) (quoting *Allied Structural Steel Co v Spannaus*, 438 US 234, 244 (1978)). To show that there has been a substantial impairment, a party must establish (1) that there is a contractual relationship; (2) that a change in law impairs that contractual relationship; and (3) that the impairment is substantial. *729, Inc v Kenton Cnty Fiscal Court*, 515 F3d 485, 494 (CA 6, 2008). All three prongs are satisfied here.

There is no dispute that Chrysler and LaFontaine have a contractual relationship. Nor can it be disputed that retroactive application of the 2010 Amendment would impair that relationship by diminishing Chrysler's right to appoint new dealers.

LaFontaine contends that any impairment would be insubstantial because the motor vehicle franchise relationship is "heavily regulated." LaFontaine Br in Case No 146724, p 41. But states cannot freely alter private contracts within any regulated industry. As courts have made clear, the "substantiality of an impairment is not discounted simply because the affected contract provision is in some way connected to a previously regulated area." *Pizza*, p 324; *see also Chrysler Corp v Kolosso Auto Sales*, 148 F3d 892, 895 (CA 7, 1998) ("a history of

regulation is never a sufficient condition for rejecting a challenge based on the contracts clause"). "Rather, prior regulation of a field mitigates the substantiality of an impairment only to the extent that it opens a contracting party's eyes to the prospect of changes in the existing regulations or to new regulations that may affect the value of negotiated terms in the contract." *Pizza*, p 324; *see also Kolosso*, p 897; *Holiday Inns Franchising, Inc v Branstad*, 29 F3d 383, 385 (CA 8, 1994). The question is whether, in 2007, Chrysler should have foreseen the eventual expansion of the anti-encroachment zone "sufficiently to have demanded and received compensation" for that potential change at the time of contracting. *Kolosso*, p 897.

Judge Posner's opinion in *Kolosso* is instructive on this score. The case involved a retroactive statute that restricted the distributor's right to control the location of existing dealerships. *See Kolosso*, p 893. Although the statute was new, the Seventh Circuit held that Chrysler should have foreseen it because the predecessor statute was sufficiently vague to "cast a cloud over all contractual clauses restricting a dealer's freedom of action * * *." *Id.*, p 895. The new statute "in effect regularized a gray area in the dealership law by creating a specific procedure for resolving disputes over dealers' requests to relocate." *Id.*, p 896 ("The change was thus largely procedural.").

Here, by contrast, Chrysler had been subject to a bright-line six-mile rule for more than *twenty-six years* by the time the parties executed the SSA. There was no vagueness or ambiguity in the law; six miles is six miles. Thus, unlike the statute in *Kolosso*, the 2010 Amendment did far more than "regularize[ ] a gray area in the dealership law." *Id.* It was an "abrupt and consequential" change in the law, which had been stable for twenty-nine years by the time of the amendment. *Id.*, p 897. Moreover, Michigan law at the time the parties executed their agreement gave no reason to believe that a future amendment might be applied to pre-existing

franchise agreements. The courts had taken a firm line against retroactive application of the existing Motor Vehicle Dealers Act. *See, e.g., Dale Baker Oldsmobile*, p 220; *Joe Dwyer v Jaguar Cars*, 167 Mich App 672, 684; 423 NW2d 311 (1988) (per curiam). And the few state franchise laws that applied retroactively had "almost uniformly been held unconstitutional." *Branstad*, p 385 (noting that "this is a datum on which franchisors are presumably allowed to rely while bargaining and in fixing the prices of their licenses").

Chrysler therefore was not "chargeable with notice of a reasonable possibility" that the legislature would enact the 2010 amendment and make that section retroactively applicable to existing franchise contracts. *Id.*, p 385 (holding that retroactive application of state franchise law violated the Contracts Clause). Chrysler almost certainly did not "demand[ ] and receive[ ] compensation" based on the likelihood of the future change. *Kolosso*, p 897. Retroactive application of the 2010 Amendment would substantially impair Chrysler's contractual rights.

"If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem." *Energy Reserves Group, Inc v Kansas Power & Light Co*, 459 US 411, 411-12 (1983). There is no such justification for the 2010 Amendment. Motor vehicle franchise laws are sometimes said to be intended to address a disparity in bargaining power between manufacturers and dealers. In light of the extraordinary protectionist legislation already in place, any such disparity favors the incumbent *dealers*, not manufacturers. But even if the claimed justification were valid, it is settled that an ostensible "leveling [of] the playing field between contracting parties" does not constitute "a significant and legitimate public interest" for Contract Clause purposes. *Equipment Mfrs Inst v Janklow*, 300 F3d 842, 861 (CA 8, 2002) (citing *Allied Structural Steel*, p 247); *see also Craigmiles v Giles*,

312 F3d 220, 224 (CA 6, 2002) ("Courts have repeatedly recognized that protecting a discrete interest group from economic competition is not a legitimate governmental purpose.").

It is thus clear that no countervailing public interest offsets the substantial impairment of Chrysler's contractual rights. If the 2010 Amendment were construed to apply to Chrysler's agreement with LaFontaine, it would violate the Contract Clauses of the Michigan and United States Constitutions. *See, e.g., Rutherford Farmers Coop v MTD Consumer Group, Inc*, 124 F Appx 918, 921 (CA 6, 2005) (unpublished) (holding that application of amended statute to pre-existing dealer agreement violated the Contract Clause of the United States Constitution); *Cloverdale Equip Co v Manitowoc Eng'g Co*, 149 F3d 1182 (CA 6, 1998) (unpublished) (same); *Reliable Tractor, Inc v John Deere Constr & Forestry Co*, 376 F Appx 938, 942 (CA 11, 2010) (unpublished) (same). To avoid the constitutional problems that would attend retroactive application of the 2010 Amendment, the Court should follow the Sixth Circuit's lead and give the amendment prospective effect. *See Kia Motors America*, p 741 (giving Michigan Motor Vehicle Dealer Act prospective effect in order to avoid "a significant constitutional question"); *Dale Baker Oldsmobile*, p 221 (same); *see also Scuncio Motors*, p 13; *Buggs*, p 621.

CONCLUSION

For the foregoing reasons, the Court should reverse the Court of Appeals' decision.

Dated: February 6, 2014

Respectfully submitted,

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