STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

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

Docket No. 146724

Plaintiff-Appellee,

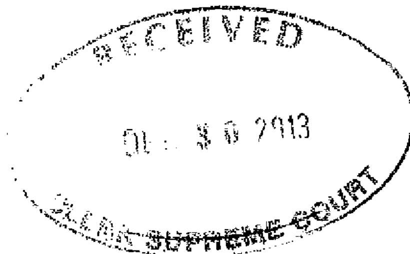
vs.

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

Defendants-Appellants

BRIEF ON APPEAL --- APPELLEE LAFONTAINE SALINE, INC. D/B/A LAFONTAINE CHRYSLER JEEP DODGE RAM

ORAL ARGUMENT REQUESTED



Ward M. Powers (P33739)
302 W. Main St.
Northville, MI 48167
(248) 347-1700
Attorney for Appellee LaFontaine
Chrysler Jeep Dodge Ram

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STATEMENT OF JURISDICTION

The Appellee concurs with Appellant's statement of jurisdiction.

COUNTER-STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals err in finding that IHS's letter of intent was not a dealer agreement and, thus, that the application of the 2010 PA 139 definition of relevant market area applies prospectively to any future dealer agreement entered into between IHS and Chrysler?

Plaintiff-Appellee LaFontaine answers:	No.
Defendant-Appellant IHS answers:	Yes.
Defendant-Appellant Chrysler answers:	Yes.
The Court of Appeals would answer:	No.
The Trial Court would answer:	Yes.

STATEMENT OF FACTS

Chrysler Group, LLC ("Chrysler") and LaFontaine Saline, Inc. ("LaFontaine") entered into a Sales and Service Agreement for the sale and service of Jeep vehicles and Dodge vehicles on September 24, 2007 (the "Dealer Agreement" or "SSA"). (AA 48a-51a) The Dealer Agreement sets forth the terms and conditions of the parties' contractual relationship. In addition, the relationship between LaFontaine and Chrysler is governed by the "Dealer Act", MCL 445.1561 et seq., which regulates the relationship between motor vehicle manufacturers, distributors and dealers in Michigan and which was enacted in 1981, prior to the subject parties entering into the SSA. The Dealer Act prohibits unfair practices of manufacturers and distributors and provides for certain remedies and penalties for violations of its provisions. The Dealer Act was amended by the Michigan Legislature on November 1, 1983, December 30, 1998, June 28, 2000 and again on August 4, 2010 (the "2010 Amendments") in order to address a number of changes in the industry impacting dealers and manufacturers. At the time of entering in to the Dealer Agreement with LaFontaine in 2007, Chrysler was charged with the knowledge of the Dealer Act and the fact that the Dealer Act had been previously amended.

Among other things, the 2010 Amendments to the Dealer Act revised the definition of *relevant market area* to state as follows:

> "In a county that has a population of more than 150,000, the area within a radius of 9 miles of the site of the intended place of business of a proposed new vehicle dealer or the intended place of business of a new vehicle dealer that plans to relocate its place of business. . . "
> (emphasis added) MCL 445.1566(1)(a). (the "2010Amendments")

Prior to the enactment of the 2010 Amendments, *relevant market area* was defined as follows:

> "For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is greater than 25,000 the area within a radius of 6 miles of the intended site of the proposed or relocated dealers. . ."
> (emphasis added) MCL 445.1566(1)(a)

As to LaFontaine's rights to sell and service Dodge vehicles, the Dealer Agreement provides:

> DEALER shall have the non-exclusive right, subject to the provisions of this Agreement, to purchase from CC those new specified CC vehicles, vehicle parts, accessories and other CC products for resale at the DEALER's Facilities and Location Addendum, attached hereto and incorporated herein by reference. DEALER will actively and effectively sell and promote the retail sale of CC vehicles, vehicle parts and accessories in DEALER's Sales Locality. As used herein, Sales Locality shall mean the area designated in writing to DEALER by CC from time to time as the territory of DEALER's responsibility for the sale of CC vehicles, vehicle parts and accessories, although DEALER is free to sell said products to customers, wherever they may be located. Said Sales Locality may be shared with other CC dealers of the same line-make as CC determines to be appropriate.

(AA 48a-51a) The Dealer Agreement between Chrysler and LaFontaine does not use the term "relevant market area" nor does it define or restrict LaFontaine's "Sales Locality" to a particular mileage or radius.

Chrysler is required under MCL 445.1576(2) of the Dealer Act to provide written notice of its intention to establish an additional Dodge dealer in LaFontaine's relevant market area. Receipt of the written notice triggers LaFontaine's statutory right, under MCL 445.1576(3), to file a declaratory judgment action to determine whether good cause exists for establishing a new dealership within its relevant market area. It is important to recognize that the intent of this provision (MCL 445.1576(3)) is to allow dealers like LaFontaine to protest a manufacturer's proposed action where it would infringe on LaFontaine's RMA. This protection was initially provided 31 years ago because dealers like LaFontaine invest millions of dollars in their facilities, and the legislature decided that it was fair and equitable that they should receive protection from encroachments on their RMA by an overzealous manufacturer, like Chrysler.

On February 2, 2010, prior to the enactment of the 2010 Amendments, Chrysler and HIS entered into an "LOI [Letter of Intent] to Add Vehicle Line" (the "LOI). (AA 61a-64a) The

LOI, by its plain language, only covers IHS's establishment of a new facility in anticipation of Chrysler awarding it a new Dodge franchise. The LOI does not give IHS the legal rights to purchase and sell the Dodge vehicle line. On the contrary, the LOI specifically anticipates the possibility of existing or subsequent legal issues prohibiting Chrysler from entering into a dealer agreement with IHS and relieves all parties to the LOI of any legal obligations in that event:

> Should anyone file a protest or lawsuit, demand arbitration or otherwise challenge the proposed establishment, and the challenge is not dismissed, withdrawn or resolved to allow the establishment, within 90 days of the challenge being filed, Chrysler will have the right, in its sole discretion, to terminate this LOI upon written notice to You . . . If the resolution of the challenge would affect, in any way, the terms of this Letter of Intent or the ability of any party hereto to comply with these terms, then this Letter of Intent will either terminate or, by mutual agreement of the parties hereto, be amended so it is consistent with such final resolution." (AA 61a)

On October 8, 2010, Chrysler provided notice to LaFontaine pursuant to MCL 445.1576(3) that it intended to approve the establishment of a Dodge franchise at IHS's location.[1] (AA 25a) On December 9, 2010, LaFontaine filed a Complaint for Declaratory Relief requesting that the Trial Court prohibit the installation of a Dodge franchise at IHS's location, which was subsequently amended on March 24, 2011. (AA 18a-28a) Chrysler and IHS filed motions for summary disposition (AA 29a-64a; AA 65a-100a), which were ultimately granted by the Trial Court. (AA 151a-157a)

[1] By complying with the notice provision MCL 445.1576(3), Chrysler essentially has conceded that it is subject to the 2010 Amendments despite its pre-existing Dealer Agreement with LaFontaine.

STATEMENT OF MATERIAL PROCEEDINGS

LaFontaine filed its Complaint for Declaratory Judgment on December 9, 2010, and its amended Complaint on March 24, 2011, requesting that the Trial Court prohibit Chrysler from assigning a Dodge franchise to IHS because it would be in direct violation of the nine mile prohibited radius set forth in the Dealer Act and because there is no good cause for Chrysler's assignment of said franchise. (AA 18a-28a) Chrysler and IHS filed motions for summary disposition alleging that the 2010 Amendments did not apply to Chrysler and IHS's proposed actions and that LaFontaine had no statutory right to challenge the transaction under Michigan law. (AA 29a-64a; AA 65a-100a) Additionally, Chrysler and IHS argued that any application of the 2010 Amendments would be an impermissible retroactive application under Michigan law.

LaFontaine filed a response to the motions for summary disposition arguing that the Dealer Agreement between LaFontaine and Chrysler did not even address, let alone limit LaFontaine's relevant market area; and thus, the Dealer Agreement did not contain any vested rights with which the application of the 2010 Amendments to the prospective proposed establishment of the Dodge franchise would interfere. (AA 101a - 120a) LaFontaine also argued that the LOI entered into between Chrysler and IHS did not constitute a "dealer agreement" as defined by the Dealer Act and, by its plain terms, only constituted an agreement between the parties for the improvement and construction of IHS's facilities in anticipation of receiving a new Dodge franchise from Chrysler. Most notably, the LOI permitted Chrysler to terminate the LOI and to refuse to assign IHS a Dodge franchise if anyone were to protest the establishment of the franchise. (AA 61a-64a) Accordingly, LaFontaine argued that the application of the 2010 Amendments to the establishment of IHS's proposed Dodge franchise was not prohibited under Michigan law and would not violate the parties' due process rights.

The Trial Court disagreed with LaFontaine's arguments and instead granted Chrysler and IHS's motions for summary disposition. (AA 151a-157a) The Trial Court held that the LOI was a "dealer agreement" under the Michigan Dealer Act and, thus, that the presumption of prospective application of statutes under Michigan law prohibited the enforcement of the 2010 Amendments against Chrysler and IHS's proposed transaction.

LaFontaine filed a motion for reconsideration. (AA 158a-179a) The Trial Court denied LaFontaine's motion for reconsideration and additionally concluded that LaFontaine's claims were properly dismissed because they were precluded under the doctrine of ripeness because its action rested on "contingent future events that may not occur." (AA 180a-182a) LaFontaine then appealed the Trial Court's decisions to the Court of Appeals, which reversed the Trial Court, finding, as urged by LaFontaine, that there was no reason to address the issue of retroactivity where the IHS LOI is not a "dealer agreement" as defined by the Michigan Dealer Act, and where any dealer agreement between Chrysler and IHS would be entered into after the 2010 Amendments. (AA 183a-190a) Accordingly, the Court of Appeals ultimately held that LaFontaine can maintain an action under MCL 445.1576(3) to determine if good cause exists for Chrysler to establish a new Dodge franchise at IHS. (AA 183a-190a) Chrysler and IHS filed motions for reconsideration with the Court of Appeals, which were ultimately denied. (AA 191a)

STANDARD OF REVIEW

Where a trial court's decision on a motion for summary disposition is reviewed de novo, that is the standard of review to be used by this Court. *Coblentz v Novi,* 475 Mich 558, 567; 719 NW 2d 73 (2006). A motion for summary disposition under subrule MCR 2.116(C)(8) tests the legal sufficiency of the pleadings, *Johnson-McIntosh v City of Detroit*, 266 Mich App 318, 322; 701 NW2d 179 (2005), and the pleadings are considered alone, without consideration of evidence, MCR 2.116(G)(5). A motion made under subrule MCR 2.116(C)(10) tests the factual support for a claim and should be granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. In support of a MCR 2.116(C)(10) motion, the parties rely on documentary evidence. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds could differ. *The Healing Place at N Oakland Med Ctr v Allstate Ins Co,* 277 Mich App 51, 55; 744 NW2d 174 (2007).

Whether a statute applies retroactively is a question of statutory construction that this Court reviews de novo. Questions of statutory interpretation are questions of law that are reviewed de novo. *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001). This Court also reviews de novo issues of law. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

ARGUMENT

I. INTRODUCTION

IHS's characterization of the question presented for this Court's review essentially concedes the fact that the Court of Appeals' holding is a prospective, not retroactive, application of the 2010 Amendments. IHS contends that the Court of Appeals erred because it did not have the ability under the law to challenge the "future dealer agreement" between IHS and Chrysler. The conduct at issue, entering into a dealer agreement, did not occur prior to the 2010 Amendments; and thus, no retroactive application or effect occurs as a result of the Court of Appeals' opinion. Further, where IHS and Chrysler did not enter into a dealer agreement prior to the 2010 Amendments, IHS was not a member of the class protected by the Dealer Act, as IHS does not fit the definition of "new motor vehicle dealer". Therefore, where IHS had only entered into an LOI with Chrysler prior to the 2010 Amendments becoming effective, IHS can only rely on the express terms of the LOI and not the Dealer Act. The express terms of IHS's LOI with Chrysler provide that Chrysler can terminate the LOI if someone challenges the establishment of IHS's Dodge franchise and if that lawsuit is not resolved within 90 days. Accordingly, the LOI did not provide IHS with any vested contractual rights to a Dodge franchise and IHS's contentions to the contrary are visibly flawed.

II. THE MICHIGAN DEALER ACT WAS ENACTED TO PROTECT EXISTING DEALERS AND THE COURT OF APPEALS' OPINION CARRIES OUT THE INTENT OF THE ACT.

The disparity in bargaining power between manufacturers/distributors and their franchised dealers prompted the Michigan Legislature to enact the Michigan Dealer Act in order to protect dealers from actions by manufacturers and distributors whose present and future conduct could impair the economic interests of an existing dealership. See, *Pung v GMC*, 226

Mich App 384, 387; 573 NW2d 80 (1997). In *Eastern Sport Car Sales, Inc. v Fiat Motors of North America*, 1988 WL 73449 (ED Mich, 1988), the court reviewed the Dealer Act's legislative history concluding that the Act "was...primarily, for existing dealers facing the potential threat of termination or unfair competition from new dealers in their geographical sales zone..." *Id.* at 1. (Ex. A) The legislative history focuses on the concern of the practice of manufacturers of establishing new dealerships in areas which are already being served by existing dealers, thus threatening the economic well-being of the existing dealers. *Id.* at 1. The Michigan Dealer Act protects a defined class of persons: "new motor vehicle dealers". "[W]hile the dealership is wholly dependent on the franchise from the manufacturer, the manufacturer can easily exist without any individual dealership. Because of this economic domination, ***the MDA is designed to protect dealerships***." *Pung v GMC*, 226 Mich App 384, 387; 573 NW2d 80 (1997). Put simply, if an entity fits into the definition of "new motor vehicle dealer" and the manufacturer fits into the definition of "manufacturer" under the Dealer Act (as LaFontaine and Chrysler admittedly do and as IHS does not), then those parties are governed by the provisions of the Dealer Act from the date of its enactment forward, prospectively. The date of the contract between the parties is irrelevant. In the case at bar, the incident giving rise to LaFontaine's right to protest under the Dealer Act was Chrysler's October 8, 2010 letter advising LaFontaine of its intent to award a Dodge franchise to IHS. Where the issue giving rise to the cause of action occurred after the August 4th enactment of the 2010 Amendments, this case involves only the prospective application of a statute.

III. THIS CASE IS ABOUT STATUTORY RIGHTS AND NOT CONTRACTUAL INTERFERENCE AND THE LEGISLATURE INTENDED THE 2010 AMENDMENTS TO APPLY TO ALL NEW MOTOR VEHICLE DEALERS.

IHS cannot rely on the 2007 LaFontaine Dealer Agreement or its own LOI as a defense to having to comply with the current law governing Chrysler's obligations when adding a new dealer in the relevant market area of LaFontaine's existing dealership. If this Court were to endorse IHS's argument, it would essentially be holding that merely because two parties have a contractual relationship that predates an amendment to a statute which governs the industry in which those parties operate, the parties can escape compliance with current law, even where there is no issue of retroactivity. IHS unsuccessfully argued this before the Court of Appeals in an attempt to create an issue of retroactivity, which the Court of Appeals wholly rejected. As properly held by the Court of Appeals, there was no issue of retroactivity to be addressed. Since Chrysler entered into the Dealer Agreement with LaFontaine, it has been required to comply with the notice provision set forth in MCL 445.1576:

> Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

As of August, 2010, the relevant market area was defined as a 9-mile radius from an existing dealership. Therefore, as Chrysler was required to do, it sent a notification letter to LaFontaine in October, 2010 ***before entering into a dealer agreement with IHS***, which then triggered LaFontaine's right to protest the proposed location under MCL 445.1576(3). IHS argues that as of February 2, 2010, no notice was required to existing dealers. LaFontaine does not dispute that statement; however, the Dealer Act specifically requires notice to be provided "[b]efore a manufacturer or distributer enters into a dealer agreement." Where Chrysler did not enter into a

dealer agreement with IHS prior to the 2010 Amendments, Chrysler was required to send the statutory notification to LaFontaine irrespective of the fact that IHS had entered into an LOI prior to the effective date of the 2010 Amendments. Like Chrysler, IHS attempts to make the central issue of this case one of interference with alleged vested contractual rights when, in fact, it is about the statutory relationship between dealers and manufacturers and the requirement under the Dealer Act mandating that manufacturers provide notice to existing dealers of their intention to appoint a new dealer within the Dealer Act's defined relevant market area. See MCL 445.1576. When examining a statutory provision, this Court is required to "give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art." *Bukowski v. City of Detroit*, 478 Mich. 268, 274; 732 NW2d 75 (2007). Giving MCL 445.1576 its plain meaning, a manufacturer is required to give notice to a "new motor vehicle dealer" of the same line make in the relevant market area before entering into dealer agreement with a proposed new like-line dealer.

Although IHS argues that the 2010 Amendments did not include express language regarding retroactivity, where the Legislature did not specifically amend MCL 445.1576 when the 2010 Amendments were enacted to provide that those dealers with contracts in existence prior to the 2010 Amendments are not entitled to notice, then by its plain meaning, the notice provision in MCL 445.1576 applies to all "new motor vehicle dealers" in existence at the time of the 2010 Amendments without any issue of retroactivity. MCL 445.1576 does not state that only those "new motor vehicle dealers" who become dealers from this day forward are entitled to notice, but that is the way IHS and Chrysler are suggesting MCL 445.1576 should be interpreted - that this section does not apply to any dealers in existence in this state prior to

August 4, 2010. Instead, by its plain meaning, the statute reads that all dealers receive notice, including all those in existence prior to the 2010 Amendments without any exception.

Furthermore, the term "new motor vehicle dealer" by its definition is a vehicle dealer with a "dealer agreement":

> "New motor vehicle dealer" means a person, including a distributor, that holds a dealer agreement granted by a manufacturer, distributor, or importer for the sale or distribution of its motor vehicles; is engaged in the business of purchasing, selling, exchanging, or dealing in new motor vehicles; and has an established place of business in this state.

MCL 445.1565. Thus, where the definition itself refers to those persons with dealer agreements, by its plain meaning the 2010 Amendments apply to all dealers with dealer agreements entered into either before or after the 2010 Amendments, where the notice provision requires Chrysler to give notice to all "new motor vehicle dealers" within the relevant market area of the proposed new dealer. At the time that Chrysler's obligation to provide notice arose (before entering into a dealer agreement), the relevant market area applicable to LaFontaine was 9 miles.

Further, the language used by the legislature in defining "relevant market area" also evidences the legislature's intent that the 2010 Amendment apply to all dealer agreements, regardless of their effective date. In pertinent part, "relevant market area" is defined as "the area within a radius of nine miles of the site of the intended place of business of a proposed new dealer." MCL 445.1566(1)(a). The definition itself is expressed in relation to the location of the proposed new dealer, rather than the existing dealer. Clearly, this signifies that the legislature intended to apply the 2010 Amendment to all new dealer appointments and that the legislature intended the nine mile limitation to include all existing dealers within that expanded area. Also, as stated above, where the definition of "new motor vehicle dealer" by its plain

language limits the persons protected by the act to those dealers with dealer agreements in place, it is clear that the legislature intended the 2010 Amendments to apply to existing dealers like LaFontaine. See MCL 445.1565.

IV. THE SIXTH CIRCUIT ERRED IN *KIA V GLASSMAN* AND THIS COURT IS NOT BOUND BY NOR SHOULD IT FOLLOW THIS ERRONEOUS REASONING.

In its order granting Appellant's Application for Leave to Appeal, this Court specifically directed the parties to compare the case of *Kia Motors America, Inc v Glassman Oldsmobile Saab Hyundai, Inc*, 706 F3d 733, 735 (CA 6, 2013). As a threshold issue, of course, federal court interpretations of state law are not binding or controlling on state courts. *Van Buren Twp v Garter Belt, Inc.*, 258 Mich App 594, 604; 673 NW2d 111 (2003). "This Court is not bound by federal decisions interpreting Michigan law." *Ryder Truck Rental, Inc. v Auto-Owners Ins. Co., Inc.*, 235 Mich App 411, 416; 597 NW2d 560 (1999). When assessing the intent of a State legislature, a federal court is bound by a state court's construction of that state's own statutes. *Banner v* Davis, 886 F2d 777 (CA 6, 1989). See also, *Missouri v* Hunter, 459 US 359 (1983). Thus, federal courts defer to state courts on interpretations of state statutes. Where there are no conflicts between the Court of Appeals decision in this matter and any prior decision of this Court, this Court should affirm the decision of the Court of Appeals.

There is a direct conflict in the present case between the published decision by the Court of Appeals below and the Sixth Circuit's holding in *Kia*. Therefore, either the Sixth Circuit ***or*** the Michigan Court of Appeals erred in reaching their conclusion. LaFontaine respectfully submits that the Court of Appeals in this case correctly recognized that, with the LOI issue resolved, the issue of retroactivity does not apply to the instant facts. In *Kia*, the Sixth Circuit's reasoning was mistakenly premised on considering the date of the original sales and service

agreement (SSA) between the manufacturer and the dealer as opposed to the date that the cause of action arose. The *Kia* decision expressly defined the "nub" of the issue being the application of the Dealer Act to the parties' contract. On the contrary, as properly held by the Court of Appeals, it is about the statutory relationship between dealers and manufacturers and the requirement under the Dealer Act mandating that manufacturers provide notice to existing dealers of their intention to appoint a new dealer within the Dealer Act's defined relevant market area. See MCL 445.1576. If this Court were to follow the *Kia* decision, one can imagine the commercial, legal, and logistical chaos that would ensue.

Furthermore, the Sixth Circuit Court of Appeals essentially dismissed the Court of Appeals opinion below, unwilling to acknowledge that the parties involved in the case at bar raised issues of retroactivity. Instead, the Sixth Circuit only mentioned the Court of Appeals opinion in one line in a footnote, stating that the issue in LaFontaine was "whether a letter of intent qualifies as a dealer agreement." Indeed, the Court of Appeals did spend time addressing that issue, as it was necessary to address that issue first in order to ultimately conclude that the application of the 2010 Amendments to Chrysler and IHS's proposed transaction was a prospective and not retroactive application of the law. Accordingly, where the Court of Appeals decision was not erroneous and followed its previous ruling in *Anderson's* supra, this Court should affirm the Court of Appeals' decision.

V. WHERE THE ISSUE AT HAND IS THE FUTURE DEALER AGREEMENT BETWEEN IHS AND CHRYSLER, THERE IS NO ISSUE OF RETROACTIVE APPLICATION AND THE COURT OF APPEALS' HOLDING DOES NOT IMPERMISSIBLY APPLY THE 2010 AMENDMENTS RETROACTIVLY AGAINST CHRYSLER AND IHS.

IHS's argument greatly oversimplifies and thereby vastly overextends the concept of the prohibition against retroactivity. Parties to a contractual agreement obtain certain legal rights as

specifically agreed to under their contract and in their relationship with the contracting party that project indefinitely into the future. Whether a future law will interfere with these rights cannot be generalized and oversimplified, as IHS contends. As the U.S. Supreme Court recognized: "The States must possess broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result. Otherwise, one would be able to obtain immunity from state regulation by making private contractual arrangements." *United States Trust Co. v New Jersey*, 431 US 1, 22 (1977). A contract in and of itself does not make the contracting parties immune to future legislation merely because of their contractual relationship. Almost all significant legislation operates to some extent to affect legal relations entered into prior to its enactment.

In *Patel v Gonzales*, 432 F 3d 685, 690 (CA 6, 2005), the court held: "[a] statute does not operate retroactively merely because it is applied in a case arising from conduct antedating the statute's enactment." (citing *Langraf v USI Film Prods.*, 511 US 244, 269, 114 S Ct 1483 (1994)) Applying this principle to the case at bar merely because the relationship between IHS and Chrysler and between Chrysler and LaFontaine arises out of a contract entered into prior to the 2010 Amendment's enactment, does not mean that an issue of retroactivity exists. In *Hughes v Judges Retirement Board*, 407 Mich 75, 86; 282 NW2d 160 (1979), this Court also held: "A statute is not regarded as operating retrospectively because it relates to an antecedent event. Merely because some of the requisites for its application are drawn from a time antedating its passage does not constitute a law retrospective." Contrary to the arguments being made by IHS and Chrysler, "[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*, supra, p 85; *Ballog v Knight Newspapers, Inc*, 381 Mich 527, 533-534; 164 NW2d 19 (1969).

As correctly held by the Court of Appeals, retroactive application of the 2010 Amendment is not the issue 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. IHS argues that because it entered into the LOI before the 2010 Amendment was enacted and because Chrysler and LaFontaine had a Dealer Agreement in place during the time when the Michigan Dealer Act defined "relevant market area" as six miles, the parties are forever bound by this now nonexistent provision. This position flies in the face of well-established Michigan law and general logic:

> Where a section of a statute is amended, the original ceases to exist, and the section as amended supersedes it and becomes a part of the statute for all intents and purposes as if the amendment had always been there.
>
> Nevertheless, the old section is deemed stricken from the law, and the provisions carried over have their force from the new act, not from the former.
>
> It is plain from the authorities in this state and elsewhere that the effect of an act amending a specific section of a former act, in the absence of a saving clause, is to strike the former section from the law, obliterate it entirely, and substitute the new section in its place. This effect is not an arbitrary rule adopted by the courts. It is the natural and logical effect of an amendment 'to read as follows.' It accomplishes precisely what the words import. Any other construction would do violence to the plain language of the Legislature.

Lahti v Fosterling, 357 Mich 578, 588; 99 NW2d 490 (1959).

Lahti is very relevant to the case at bar, where Chrysler had not entered into a dealer agreement with IHS for the sale of the Dodge vehicles prior to the 2010 Amendments. As a result, Chrysler must comply with the existing law at the time of adding the new dealer, which requires Chrysler to send written notice to LaFontaine of its intention to add a Dodge franchise at IHS's location, which, in turn, triggers LaFontaine's right to object to the placement under

the Dealer Act. Simply put, this claim is a purely statutory cause of action. It does not involve any alleged violation of LaFontaine and Chrysler's dealer agreement or of IHS's LOI. It concerns separate statutory rights and causes of action defined by Michigan law. That law applies to all dealers, not only those who come into existence after the amendment. IHS cannot cite a single case in this or any other jurisdiction in which such an expansive definition of retroactivity has ever been applied.

As properly held by the Court of Appeals, the LOI did not provide IHS with any contractual rights to purchase and sell Dodge vehicles and, thus, where the LOI is not a "dealer agreement" as defined by the Dealer Act, there is no retroactivity issue to be addressed. The Court of Appeals specifically held that the "LOI concerns prerequisites (i.e. construction of a facility), that IHS must fulfill before Chrysler will honor its request to enter into a Dodge SSA." (AA, 188a) Whether or not that process ultimately resulted in IHS obtaining a Dodge franchise was, is, and always will be contingent upon Chrysler's ability to satisfy the legal requirements in existence at the time of entering into the subsequent dealer agreement with IHS. Not only is this a logical conclusion, but it is also expressly provided for in the LOI itself, which anticipates the possibility of existing or subsequent legal issues prohibiting Chrysler from entering into a dealer agreement with IHS and specifically relieves all parties to the LOI of any legal obligations in that event:

> Should anyone file a protest or lawsuit, demand arbitration or otherwise challenge the proposed establishment, and the challenge is not dismissed, withdrawn or resolved to allow the establishment, within 90 days of the challenge being filed, Chrysler will have the right, in its sole discretion, to terminate this LOI upon written notice to You . . . If the resolution of the challenge would affect, in any way, the terms of this Letter of Intent or the ability of any party hereto to comply with these terms, then this Letter of Intent will either terminate or, by mutual agreement of the parties hereto, be amended so it is consistent with such final resolution."

(AA, 61a) This contract language precludes any argument that the Court of Appeals' ruling has "impaired its contract and violated due process" where Chrysler and IHS specifically negotiated the terms of their LOI to provide that, ***in the event that the contemplated transaction was successfully challenged, all parties would be relieved of their obligations under the LOI.*** IHS fails to recognize that its LOI does not provide the contractual rights which it believes it to provide - IHS's entire argument is premised on its belief that the LOI guarantees it a right to sell and service new Dodge vehicles for Chrysler. However, as the Court of Appeals properly concluded: "by its plain language, the subject matter of the LOI was the establishment of a new facility. **Nothing within the LOI gives IHS the legal rights to purchase and sell the Dodge vehicle line.**" (emphasis added) (AA, 188a) For this reason, the Court concluded that the LOI did not fall under the definition of "dealer agreement", where "[a]n agreement is not a dealer agreement simply because it 'purports to establish the legal rights and obligations of the parties to the agreement or contract.'" (AA, 188a)

This case is "on all fours" with the case of *Anderson's Vehicle Sales, Inc. v OMC-Lincoln*, 93 Mich App 404; 287 NW2d 247 (1979), where the Court found the date of the underlying SSA between the parties to be irrelevant because the amendment at issue regulated conduct occurring after the effective date of the statute. *Anderson's* involved an amendment to the Michigan Dealer Act in 1978, which changed the notice that was required to be given by a manufacturer when terminating a dealer's SSA from 30 days in advance to 60 days in advance of termination, and the amendment imposed a new requirement to show cause to terminate. The trial court held that this amendment was not retroactive in application and did not apply to Dealer Agreements that had already been signed before the amendment took effect. The Michigan Court of Appeals reversed, stating that there were no retroactivity problems with the

statute because the termination at issue took place **after** the effective date of the amendment. As a result, the Court of Appeals held that the date of the underlying SSA between the manufacturer and the dealer was irrelevant **since the conduct regulated by the amendments occurred after the effective date of the legislation**. The Court of Appeals specifically held:

> To hold with defendants' position is untenable. For the Legislature to say that contracts in existence before the effective date could be terminated in violation of the terms of the statute, but ones entered into a day later were subject to all the provisions of the statute, would fly in the face of the remedial purposes of the act. We do not believe the Legislature so intended.

Id at 410.

Where the 2010 Amendment was made effective immediately, as was the 1978 amendment in *Anderson's*, this Court should follow *Anderson's* holding: The 2010 Amendment was given immediate effect, which simply means that after August 4, 2010, the new nine mile "relevant market area" definition applies and dictates if and when notice must be given to an existing dealer such as LaFontaine when a new dealer is awarded a Dodge franchise, notwithstanding the contractual relationship between the parties. The LOI between IHS and Chrysler and the 2007 Dealer Agreement between LaFontaine and Chrysler are irrelevant for this analysis and the Court of Appeals correctly overturned the Trial Court which erred by concluding that the LOI was a Dealer Agreement instead of merely looking at the prospective application of the 2010 Amendment to the future conduct of Chrysler.

VI. IN THE EVENT THAT THIS COURT FINDS IT NECESSARY TO ADDRESS THE ISSUE OF RETROACTIVITY, ANY APPLICATION OF THE 2010 AMENDMENTS WOULD NOT BE CONSIDERED AN IMPERMISSIBLE RETROACTIVE APPLICATION WHERE NO VESTED RIGHTS ARE INVOLVED IN EITHER CONTRACT AND WHERE THE 2010 AMENDMENTS ARE REMEDIAL AND PROCEDURAL IN NATURE.

A. The 2010 Amendments are remedial in nature and, thus they fall under the recognized exception to the presumption of prospective application of the law.

In the event this Court finds it necessary to address the issue of retroactivity, it is clear that the 2010 Amendment would fall under the "exception" to the presumption of prospective application due to its remedial nature. Retrospective laws are not necessarily by their nature unconstitutional or invalid: "As the constitution does not prohibit the passing of retrospective laws, except when they are of the class technically known as *ex post facto*, congress may unquestionably pass them, even though private rights are affected thereby, unless they are invalid for some other reason than their retrospective character." *Lahti* 357 Mich at 594.

An exception to the presumption of prospective application exists where "statutes which operate in furtherance of a remedy or mode of procedure and which neither create new rights nor destroy, enlarge, or diminish existing rights are generally held to operate retrospectively unless a contrary legislative intent is manifested." *Frank W. Lynch & Co. v Flex Technologies, Inc.*, 463 Mich 578, 583-584; 624 NW2d 180 (2001). In *Hansen-Snyder Company v. General Motors Corporation*, 371 Mich 480; 124 NW2d 286 (1963), on facts remarkably similar to those in this case, this Court found that an amendment to the Mechanic's Lien Act operated retrospectively where it extended the time for filing a lien by fifty percent (50%) from sixty to ninety days because said extension did not affect the parties vested or substantive rights, despite the parties having been operating under a contract predating the amendment. Hansen-Snyder was a subcontractor on a project owned by General Motors. At the time that Hansen-Snyder

began its work on the project, the Mechanic's Lien Act required subcontractors to file their liens within 60 days of the date of first furnishing labor and/or materials to the property. While Hansen-Snyder was working on the project under an existing contract, the Michigan legislature amended the Mechanic's Lien Act extending the time for filing a lien from 60 to 90 days after first furnishing labor and/or materials. Finding that the amendment to the Mechanic's Lien Act had retrospective effect, this Court, held:

> '...remedial statutes, or statutes related to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of a remedy or confirmation of rights already existing, do not come within the legal conception of restrospective law, or the general rule against retrospective operation of statutes. To the contrary, the statutes or amendments pertaining to procedure are generally held to operate retrospectively, where the statute or amendment does not contain language clearly showing a contrary intention. Indeed, in the absence of any savings clause, a new law changing a rule of practice is generally regarded as applicable to all cases then pending. * * * Sometimes the rule is stated in the form that, when a new statute deals with procedure only, prima facie, it applies to all actions-**those which have accrued or are pending and future actions**.'

(emphasis added) *Hansen-Snyder*, 371 Mich at 484-485. In *Hansen*, the subcontractor already had the right to file a lien against the property prior to the subject amendment extending the time from 60 to 90 days. The Court specifically held: "**No right vested in [defendants] or anyone else to have the time for serving notice of intent or filing the lien limited to 60 rather than 90 days**. The amendment in that regard did not affect vested or substantive rights but pertained **solely to procedure** for effectuating the statutory right already existing." (emphasis added) *Hansen-Snyder*, 371 Mich at 485.

In *Hansen-Snyder*, despite the fact that the parties had entered into a contractual agreement, that agreement was not the source of the limitation of the time frame for filing a construction lien. Rather, the Construction Lien Act was the source of the limitation. Likewise, in the case at bar, the six mile limitation was not a part of the Dealer Agreement, but rather was

a provision contained in the Dealer Act at the time that the parties entered into their contract. Additionally, in *Hansen-Snyder*, this Court found that the extension of time to file a lien from 60 to 90 days did not affect the vested or substantive rights of the parties and instead was a change in the procedure by which the protected class could accomplish its pre-existing statutory right. Chrysler and IHS contend that *Hansen-Snyder* is distinguishable from the case at bar for this reason. However, Chrysler and IHS fail to recognize that even in *Hansen-Snyder,* where General Motors was subject to additional construction liens which it would not have been subject to prior to the amendment, this Court still found that the amendment was procedural in nature and did not affect vested or substantive rights.

Likewise, in the case at bar, LaFontaine already had the right to be protected from competition from other Chrysler dealers within a six-mile radius under the prior version of the statute. As in *Hansen-Snyder*, the 2010 Amendment merely increased that protection by fifty percent (50%) to nine miles, keeping consistent the procedures that a manufacturer must follow to notify an existing dealer when desiring to appoint a new dealer within that restricted area. Chrysler's duties to notify existing dealers prior to entering into a dealer agreement with a like-line dealer did not change. The only change resulting from the 2010 Amendments is to whom the notice must be sent. Furthermore, as in *Hansen-Snyder* and *Lahti, supra*, no right had vested in Chrysler to have the definition of relevant market area remain fixed at six miles. Thus, the increase to nine miles is merely a procedural and remedial change that does not affect a vested right and, hence, does not come within the general rule against retrospective operation of statutes.

Contrary to IHS's claims, the 2010 Amendment does not create a new legal burden nor does it have a punitive or deterrent purpose. The 2010 Amendment was a minor change to a

definition of the term "relevant market area", expanding it from six miles to nine miles. The remaining provisions regarding Chrysler's notice obligations and LaFontaine's rights to object subsequent to the receipt of notice did not change and existed prior to the date of the Dealer Agreement. Therefore, where the 2010 Amendments are procedural in nature and where the legislature did not express a contrary intention, the 2010 Amendments must be given retrospective application, if necessary, and should govern the establishment of a Dodge franchise at IHS's location.

B. The application of the 2010 Amendments to the proposed future transaction between Chrysler and IHS does not improperly impair the LOI, where no vested contractual rights are impaired by the expansion of the size of relevant market area.

IHS and Chrysler confuse the concepts of "vested contractual right" and "statutory right" in concluding that the application of the 2010 Amendments would interfere with a vested right. On the contrary, Michigan law has established that a statutory right is not a vested right and cannot serve as a basis for a contracts clause challenge. "A statutory defense, or a statutory right, though a valuable right, is not a vested right, and the holder thereof may be deprived of it." *Lahti, supra,* 357 Mich at 589. Chrysler's right to place a competing dealership within the relevant market area of LaFontaine's dealership "'sprang from the kindness and grace of the legislature. And it is the general rule that that which the legislature gives, it may take away.' " *Rookledge v Garwood,* 340 Mich 444, 457; 65 NW2d 785 (1954) (citing *Wylie v City Commission,* 293 Mich 571, 292 NW 668 (1940)). **Where an amendment to a statute does not affect a vested right it is not invalid despite its retrospective effect.** *Lahti,supra,* 357 Mich at 594. IHS's argument that the mere fact that it had an LOI in place with Chrysler prior to the enactment of the 2010 Amendments means it has a vested right in the 6-mile radius limitation, precluding any change in that limitation is directly contrary to the this Court's

pronouncements, including its holding in *Harsha v. City of Detroit*, 261 Mich 586, 594; 246 NW 849 (1933): "There can, in the nature of things, be no vested right in an existing law which precludes its change or repeal." Also, " a right cannot be considered a vested right, unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exemption from a demand made by another." *GMAC LLC v Dep't of Treasury*, 286 Mich App 365, 377 (2009) (quoting *Cusick v Feldpausch*, 259 Mich 349, 352; 243 NW 226 (1932)). "However, a vested right cannot be premised on an expectation that general laws will continue and certainly cannot be premised on the continuation of tax law." *Id* at 378.

IHS contends that the parties to this action had "settled expectations" which allowed Chrysler and IHS to enter into the LOI and with which the 2010 Amendments now interfere. However, as this Court has held, vested rights are rights that are more than "a mere expectation as may be based upon an anticipated continuance of the present general laws..." *Minty v Bd of State Auditors*, 336 Mich 370, 390; 58 NW2d 106 (1953). IHS's and Chrysler's reliance on the Dealer Act's six-mile relevant market area provision is not enough to prevent the parties from being subject to changes in that provision, especially where the express terms of the LOI anticipate a challenge by an existing dealership and where the express terms of LaFontaine's Dealer Agreement does not contain a relevant market area limitation.

As accurately held by the Court of Appeals, the LOI did not provide IHS with any contractual rights to purchase and sell Dodge vehicles; and thus, where the LOI was not a "dealer agreement" as defined by the Michigan Dealer Act, there is no retroactivity issue to be addressed. The Court of Appeals further held that the Michigan Dealer Act limits Chrysler's

rights to establish other like-line dealers. (AA, 184a) Accordingly, the Court of Appeals' ruling in this case expressly and correctly eliminates the entire premise of IHS's argument in this regard, i.e. that the application of the 2010 Amendments affects its contractual rights, thus raising retroactivity and due process issues. Where IHS did not have any contractual rights to be interfered with, IHS's argument is gutted of all purpose. See *Hughes, supra* at 86 ("A statute is not regarded as operating retrospectively because it relates to an antecedent event. Merely because some of the requisites for its application are drawn from a time antedating its passage does not constitute a law retrospective.")

The Court of Appeals specifically held that the "LOI concerns prerequisites (i.e. construction of a facility), that IHS must fulfill before Chrysler will honor its request to enter into a Dodge SSA." (AA, 188a) Whether or not that process ultimately resulted in IHS obtaining a Dodge franchise was, is, and always will be contingent upon Chrysler's ability to satisfy the legal requirements in existence at the time of entering into the subsequent dealer agreement with IHS. Not only is this a logical conclusion, but it is also expressly provided for in the LOI itself, which anticipates the possibility of existing or subsequent legal issues prohibiting Chrysler from entering into a dealer agreement with IHS and specifically relieves all parties to the LOI of any legal obligations in that event:

> Should anyone file a protest or lawsuit, demand arbitration or otherwise challenge the proposed establishment, and the challenge is not dismissed, withdrawn or resolved to allow the establishment, within 90 days of the challenge being filed, Chrysler will have the right, in its sole discretion, to terminate this LOI upon written notice to You . . . If the resolution of the challenge would affect, in any way, the terms of this Letter of Intent or the ability of any party hereto to comply with these terms, then this Letter of Intent will either terminate or, by mutual agreement of the parties hereto, be amended so it is consistent with such final resolution."

(AA, 61a) This contract language precludes any argument that the Court of Appeals' ruling has "impaired its contract and violated due process" where Chrysler and IHS specifically negotiated the terms of their LOI to provide that, in the event that the contemplated transaction was successfully challenged, all parties would be relieved of their obligations under the LOI. IHS fails to recognize that its LOI does not provide the contractual rights which it believes it to provide - IHS's entire argument is premised on its belief that the LOI guarantees it a right to sell and service new Dodge vehicles for Chrysler. However, as the Court of Appeals properly analyzed and concluded: "by its plain language, the subject matter of the LOI was the establishment of a new facility. **Nothing within the LOI gives IHS the legal rights to purchase and sell the Dodge vehicle line.**" (emphasis added) (AA, 188a) For this reason, the Court concluded that the LOI did not fall under the definition of "dealer agreement", where "[a]n agreement is not a dealer agreement simply because it 'purports to establish the legal rights and obligations of the parties to the agreement or contract.'" (AA, 188a)

IHS argues that the Court of Appeals erred where Michigan law clearly prohibits retroactive application of the 2010 Amendments because it deprives IHS and Chrysler of the contractual rights contained in the letter of intent and, therefore, violates due process. This argument is devoid of logic, where it is absolutely necessary to look to the contents of the LOI to determine whether it constitutes a "dealer agreement" under the Act. The Court of Appeals ruling essentially states that if the LOI had specifically established the legal rights regarding the purchase and sale of Dodge vehicles and accessories, then Chrysler would not have had to comply with the notice requirements under the Michigan Dealer Act, where the Act in effect at that time would have permitted a like-line franchise to be placed within nine miles of LaFontaine's dealership. On the contrary, in the case at bar, where the LOI did not spell out

these rights, the issue now becomes "whether good cause exists for establishing the Dodge vehicle line at IHS" pursuant to MCL 445.1576(3).

IHS also makes a conclusory argument that the application of the 2010 Amendments to the planned establishment of the new Dodge franchise at IHS improperly impairs IHS's contractual rights with Chrysler. IHS spends time analyzing in detail the contents of the LOI, arguing that the Court of Appeals dismissed the LOI as merely a contract to construct a new facility, showing that it met all of the requirements of the LOI and that Chrysler agreed to accept the offer of a Dodge Sales and service agreement if IHS performed all of the LOI requirements. However, IHS fails to acknowledge that the agreement was explicitly contingent on an existing dealership's objection to the establishment and thus, IHS's argument falls short where there clearly were not "vested rights" obtained through the LOI, as Chrysler had the sole authority to terminate the LOI upon the reasons set forth therein. IHS entered the LOI knowing that it could be expending its funds to prepare its facility but that Chrysler could decide to pull the plug if an objection was made by an existing dealer.

As correctly held by the Court of Appeals, the circuit court clearly erred in finding that the LOI entered into between IHS and Chrysler is a "dealer agreement" as that term is defined by the Michigan Dealer Act. On the contrary, the LOI is merely an outline of the terms and conditions that Chrysler requires IHS to satisfy in order to be eligible to enter into a Dodge Sales and Service Agreement with Chrysler. This becomes crystal clear when the specific terms and provisions of the LOI are reviewed, in particular, Paragraph 2, which provides Chrysler with the sole discretion to terminate the LOI if anyone protests the proposed establishment of the new dealership. Paragraph 2 of the LOI specifically contemplates the lawsuit filed by LaFontaine, thus, it is clear that the LOI is not a dealer agreement under the Michigan Dealer

Act where the manufacturer is permitted to unilaterally terminate the agreement upon the occurrence of certain factors. If the Michigan Legislature intended to include LOI's in the definition of "dealer agreement", then Chrysler would not be permitted to unilaterally terminate the LOI without following the provisions of the Michigan Dealer Act, whose sole purpose was to protect dealers in their relationship with manufacturers caused by the recognized disparity in bargaining power between the two parties.

As repeatedly argued by LaFontaine, the language of the Dealer Act itself supports this reasoning:

> (2) Before a manufacturer or distributor enters into **a dealer agreement** establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(emphasis added) MCL 445.1576. This language shows that the notice Chrysler must issue relates to a "dealer agreement" and not an LOI. Nowhere does the Dealer Act reference an LOI for the simple reason that an LOI does not award a vehicle line, but is only a letter showing the intent of the parties to enter in to a subsequent dealer agreement to eventually award a vehicle line.

Notwithstanding the fact that there is law in Michigan establishing that a letter of intent can be considered a contract, this does nothing to show that the LOI is a "dealer agreement" under the Michigan Dealer Act, which would trigger the obligation of Chrysler to provide notice of the appointment of a new dealer in an existing dealer's relevant market area. LaFontaine is not arguing that the LOI is unenforceable as a contract nor did the Court of Appeals conclude this, contrary to IHS's assertions. Rather, the Court of Appeals concluded that the LOI is not a dealer agreement, and upon the execution of a "dealer agreement" between

Chrysler and IHS, Chrysler will be required to comply with the notice provisions contained in MCL 445.1576 because the proposed location of IHS's Dodge franchise is within a 9-mile radius of LaFontaine's existing dealership. Contrary to IHS's argument, the LOI is not the contract that granted it a Dodge franchise and it does not satisfy the definition of a dealer agreement under the Dealer Act. Nowhere in the LOI does it grant IHS a Dodge franchise. On the contrary, the LOI specifically states that it "constitutes Your [IHS] and CG's [Chrysler Group's] entire agreement concerning the establishment of the Facility. It supersedes all prior negotiations, understandings, correspondence and agreements relating to **that subject matter.**" (emphasis added) (AA, 64a) As the Court of Appeals found, the LOI does not govern the sales and service of Dodge vehicles; and thus, the LOI does not fit within the definition of "dealer agreement" under the Dealer Act.

C. The application of the 2010 Amendments to the possible future dealer agreement between Chrysler and IHS does not impose new substantive rights and duties on Chrysler and any conclusion to the contrary would be inconsistent with Michigan law.

The 2010 Amendment was a minor change to a definition of the term "relevant market area", expanding it from six miles to nine miles. The remaining provisions regarding Chrysler's notice obligations and LaFontaine's rights to object subsequent to the receipt of notice existed prior to the date of the 2007 Dealer Agreement did not change with the 2010 Amendments. Therefore, where the 2010 Amendments are procedural in nature and where the legislature did not express a contrary intention that they should not be applied to existing "new motor vehicle dealers", the 2010 Amendments govern any future additions of new dealers by Chrysler in Michigan.

IHS points to the case of *Dale Baker Oldsmobile v. Fiat Motors of North America, Inc.*, 794 F2d 213 (6th Cir 1986) in support of its position that other courts applying Michigan law

have refused to impose amendments similar to the 2010 Amendments on dealers and manufacturers. However, *Dale Baker* is readily distinguishable from the case at bar for two reasons: (1) it discusses retroactivity with respect to transactions already past, and (2) the statutory section at issue imposed new duties on the manufacturer and provided the dealer with new substantive rights which did not exist prior to the enactment of the amendment. In *Dale Baker*, the plaintiff and defendant had entered into a franchise agreement for the sale and service of Fiat vehicles in 1980, which spelled out in detail the rights and obligations of the parties in the event of termination. In 1981, the Michigan legislature replaced the act that previously regulated motor vehicle dealers and manufacturers with the Dealer Act, which included Section 11, which provided that upon termination of a dealer, the manufacturer was required to pay the dealer fair and reasonable compensation for a multitude of items listed in the section and to "pay to the dealer a sum equal to the current, fair rental value of its established place of business for a period of one year from the effective date of termination, cancellation, non-renewal, or discontinuance, or the remainder of the lease, whichever is less, unless the termination, etc., is the result of dealer misconduct identified in section 10(c) of the Act." *Dale Baker,* 794 F2d at 215. In 1983, Fiat terminated Dale Baker in accordance with the terms of the dealer agreement, and Dale Baker brought suit alleging that it was entitled to recover damages under the 1981 Dealer Act, arguing that it fell under the exception to the presumption of prospective application of statutes. The Court, however, did not agree, holding:

> …application of section 11 in this case would impose substantial new duties on defendant as well as giving plaintiff *substantive* rights, neither of which existed **by law or contract**. Under section 11, defendant would be required to pay plaintiff a sum equivalent to the current rental value of plaintiff's place of business for one year, or, if there is a lease, the remainder of the lease, whichever is less. In addition, section 11 requires the defendant to purchase cars, parts, tools and signs under terms substantially different than those provided in the parties' agreement.

(emphasis added) *Dale Baker,* 794 F2d at 219-220.

As repeated throughout the court's analysis in *Dale Baker*, a remedial amendment is one which does not "create substantive rights that had no prior existence in law or contract." *Dale Baker,* 794 F2d at 217. The enactment of Section 11 of the 1981 Dealer Act was clearly not remedial and, therefore, it could not be treated as operating retrospectively without the legislature having expressed the clear intent to do so. In the case at bar, however, the rights and remedies surrounding the appointment of a new dealer within the "relevant market area" did not change. Rather, the 2010 Amendment only changed the definition of "relevant market area" by adding three miles to the previous definition. The 2010 Amendments do not impose any new legal duties on Chrysler that did not already exist in the prior version nor does it create new substantive rights for an existing dealer, such as LaFontaine.

The Sixth Circuit Court of Appeals reached the erroneous conclusion in *Kia v Glassman* that the 2010 Amendment was a substantive and not a remedial amendment by misapplying the holding of the *Dale Baker* case. Contrary to the changes to the law at issue in *Dale* Baker, the 2010 Amendment only changed the definition of "relevant market area" by adding 3 miles to the previous definition. The rights and remedies surrounding the appointment of a new dealer within the "relevant market area" did not change. No substantive new duties were created by the amendment, nor did the amendment add new substantive rights for dealers. All the duties and rights remained consistent before and after the 2010 Amendments. The duties (prior notice by manufacturer) and rights (declaratory judgment action to challenge new franchise) already existed in the Act prior to the 2010 Amendments. Specifically, the *Dale Baker* Court held: "application of section 11 in this case would impose substantial new duties on defendant as well

as giving plaintiff *substantive* rights, **neither of which existed by law or contract**." That is not the case here.

IHS contends that the Sixth Circuit Court of Appeals in *Kia* made the correct decision in rejecting Glassman's argument that a retroactivity analysis was not necessary. The Sixth Circuit, however, erred in finding that the parties' contract in *Kia* was the source of Kia's right to establish a new dealer within a certain distance from an existing dealer such as Glassman. Therefore, based on this erroneous conclusion, it believed it was necessary to then address Kia's retroactivity arguments. As in the case at bar, in *Kia*, the parties' dealer agreement did not define relevant market area nor contain any specific description of the existing dealer's sales locality in terms of measurable distance. Therefore, the Sixth Circuit should have concluded that a retroactivity analysis was unnecessary because a statutory right is not a vested right and, thus, is a modifiable right at the discretion of the legislature.

Additionally, the Sixth Circuit erred in finding that the 2010 Amendment added a substantive right to object to the establishment of a new dealer. First, as acknowledged by the Sixth Circuit itself "Before the Amendment, **the statute allowed** Kia to establish a new dealer more than six miles from Glassman without restriction." (emphasis added) This statement confirms that this is a statutory right and not a contractual right which governs the establishment of new dealers by Kia. Following this conclusion, the Sixth Circuit cited the case of *Bob Tatone Ford, Inc. v Ford Motor Co.* in rejecting Glassman's argument that there is not a retroactivity issue to even address where compliance with the 2010 Amendment by Kia would only require a prospective application of the 2010 Amendments. Relying on *Bob Tatone Ford*, the Sixth Circuit rejected this argument finding "this argument ignores the fact that the Amendment affects Kia's rights under a contract that predates the Amendment," contradicting itself by now

concluding that the right to establish a new dealer more than six miles from an existing dealership is one arising out of Kia's contract with Glassman. The Sixth Circuit went on to analyze this right and characterized it as a vested right, which does not comport with Michigan law, as argued above: "A statutory defense, or a statutory right, though a valuable right, is not a vested right, and the holder thereof may be deprived of it." *Lahti,* 357 Mich at 589. Likewise, in the case at bar, Chrysler's right to place a competing dealership within the relevant market area of LaFontaine's dealership "'sprang from the kindness and grace of the legislature. And it is the general rule that that which the legislature gives, it may take away.'" *Rookledge v Garwood*, 340 Mich 444, 457, 65 NW2d 785 (1954). Where an amendment to a statute does not affect a vested right, it is not invalid despite its retrospective effect. *Lahti,* 357 Mich at 594. Accordingly, the Sixth Circuit improperly rejected Glassman's argument that any application of the 2010 Amendments to Kia would only be prospective due to the fact that the new dealer was not established prior to the August 4, 2010. Furthermore, the Sixth Circuit failed to give adequate attention to the Court of Appeals decision in the case at bar, dismissing it in a footnote. Therefore, this Court should not follow the ruling of the Sixth Circuit and is not bound to do so.

The remaining cases cited by IHS are also distinguishable from the case at bar. In *Yakubinis v Yamaha Motor Corp., USA*, 365 Ill App 3d 128; 847 NE2d 552 (2006), the amendment to the subject franchise act created a new right for existing dealers to challenge relocations by manufacturers which had previously not existed under the statute or in common law. The court concluded that the amendment could not be applied retroactively where the franchise agreement between Yakubinis and Yamaha provided: "Yamaha reserves the right to appoint additional dealers of any or all of the Products at any time pursuant to Yamaha's

marketing program and policies." At the time of entering into their franchise agreement, there was no statutory "provision [which] forbade the franchisors from relocating other dealers in the franchisees' market areas without good cause." The 1995 amendment at issue imposed a new statutory duty on a manufacturer to show that it has good cause to establish a new like-line dealer within an existing dealer's relevant market area. Compared to the case at bar, the notice requirement, protest right and good cause requirements contained in MCL 445.1576(2) and (3) have been a part of the Michigan Dealer Act since its enactment in 1981. The only change made by the 2010 Amendments was an expansion of the relevant market area from 6 to 9 miles.

IHS also relies on the Seventh Circuit Court's holding in the case of *Ace Cycle World, Inc. v Am Honda Motor Co, Inc.,* 788 F2d 1225 (CA 7, 1986). The facts in *Ace Cycle World, Inc. v American Honda Motor Co.*, are distinctly different from those present in the case at bar, such that the holding is entirely inapplicable and should be disregarded by this Court. In *Ace*, the Court held that an amendment to the Illinois Motor Vehicle Franchise Act which changed the definition of relevant market area from "the geographic scope defined by the franchise agreement" to "as the greater of 'the area within a 10 mile radius from the principal location of the franchise' or the area defined in the franchise agreement," could not be applied retroactively. *Ace* 788 F2d at 1226. However, in *Ace*, the franchise agreement at issue had no defined relevant market area. Thus, at the time of entering into the franchise agreement, Honda was free to place a new dealership as close or as far from the Plaintiff's dealership as it desired because the parties failed to define the term "relevant market area".

On the contrary, at the time that LaFontaine and Chrysler entered into the Dealer Agreement, the Legislature had already enacted a provision which restricted Chrysler from establishing a new dealer within a 6-mile radius of an existing like-line dealer. Unlike the

Illinois Act, the Michigan Dealer Act did not leave it up to the parties to define relevant market area. And nowhere in the Dealer Agreement did Chrysler and LaFontaine limit LaFontaine's relevant market area to a 6-mile radius. Therefore, where Chrysler was fully aware of the statute restricting the placement of a like line dealership within the geographic area of LaFontaine and where Chrysler failed to specifically address this issue in its Dealer Agreement, subsequent expansions or contractions of the statutorily defined relevant market area are binding, especially as to establishments of dealers after the expansion of the relevant market area as with IHS.

Additionally, missing from IHS's analysis of the *Ace* opinion was the following qualification included in the Seventh Circuit Court's opinion: "**to the extent** Honda had a vested right under the 1983 contract to establish the new dealership, see part III, *infra*, Illinois law would preclude the later amendments to the Act from defeating the right." 1228. The *Ace* Court relied on the case of *McAleer Buick-Pontiac Co. v. General Motors Corp.,* 95 Ill.App.3d 111, 50 Ill.Dec. 500, 419 N.E.2d 608 (1981) to support its opinion. Both the *Ace* and *McAleer* courts analyzed the retroactivity issue in the context of the explicit terms of the parties' contractual agreement in order to decide whether a retroactive application of the statute would cause a "substantial impairment of [a party's] contractual rights." The *Ace* Court found: "Prior to the 1983 amendments, it had been held that the scope of the relevant market area was limited to that area described in the franchise agreement, and if none was specified, none existed." Clearly, the *Ace* Court based its conclusion on not only the lack of the legislature's explicit direction on retroactive application of the amendment, but also on the additional fact that the retroactive application would cause a contracts clause issue - intertwining these two issues.

And in *Fireside Chrysler-Plymouth Mazda, Inc. v. Chrysler Corp.,* 129 Ill App 3d 575, 582-583 (1984), the court did indeed find that the application of the newly defined relevant market area in relation to the parties' pre-existing dealer agreement would be impermissibly retroactive in contradiction of established law. However, the court came to this conclusion based upon the fact that the franchisor had obtained a vested right through its contract, which contained a specifically defined sales locality broken down by county and city, and not merely because it had a pre-existing contract that predated the amendment. In reaching its holding, the court also discussed the fact this finding would not always be applicable in every situation and that there are times where the application of a subsequent statutory amendment to a pre-existing contractual relationship would not be impermissibly retroactive:

> *By our finding that application of the Motor Vehicle Franchise Act in this particular instance is retroactive and therefore impermissible, we do not, however, suggest that application of the Act to conduct arising from pre-existing franchise agreements will always be improper or retroactive.* It is well established that a statute is not retroactive merely because it relates to antecedent events or draws upon antecedent facts for its operation. (United States Steel Credit Union v. Knight (1965), 32 Ill. 2d 138, 204 N.E.2d 4.) A retroactive law is one that impairs vested rights. *A vested right is more than a mere expectation based upon an anticipated continuance of existing law; it must have become a fixed right, complete and consummated.* (Griffin v. City of North Chicago (1983), 112 Ill. App. 3d 901, 445 N.E.2d 827.) If an existing law changes by amendment or repeal prior to the vesting of a right, no cause to object arises, and the application of that law to the complained-of conduct is not unconstitutionally retroactive. 112 Ill. App. 3d 901, 445 N.E.2d 827.
>
> Chrysler, in stating that Buffalo Grove is not within Fireside's "area of primary responsibility," looks to the Act's definition of "market area," applies that definition, and concludes that pursuant to that definition, the Act was not violated by the granting of an additional franchise to B.G.C.P. in Buffalo Grove. By doing so, defendant implicitly acknowledges that the Act does apply to the 1971 franchise agreement, but because "market area" is defined in terms of the franchise agreement itself, it neither imposes a new duty nor attaches a new disability to defendant, and application of the term "market area" to the 1971 pre-existing agreement is not retroactive. Similarly, were either of the parties to engage in conduct that constituted an unfair practice under the Act, and said conduct was not governed by the terms of the pre-existing contractual agreement,

application of the Act might not impair a vested contractual right and would not then be retroactive. In such instances the prohibited conduct governed by the Act is not "in respect of transactions or considerations already past" (Marquette National Bank v. Loftus (1983), 117 Ill. App. 3d 771, 454 N.E.2d 11), but merely relates to antecedent events or draws upon antecedent facts, namely, the pre-existing franchise agreement. (Sipple v. University of Illinois (1955), 4 Ill. 2d 593, 123 N.E.2d 722.) *Under such circumstances, unlike under the circumstances of McAleer, Marquette National Bank, and the instant case, application of the Motor Vehicle Franchise Act may be prospective and therefore proper.* (emphasis added)

As so aptly stated by the *Fireside* court, merely because the conduct relates to or draws upon antecedent facts or events, such as the Dealer Agreement between Chrysler and LaFontaine, the application of subsequently enacted legislation is prospective and proper where no rights vested arose from such antecedent event or fact.

IHS cites to the case of *Antwerpen Dodge, Ltd v Herb Gordon Auto World, Inc,* 117 Md App 290; 699 A2d 1209 (1997), the summary of which by IHS is misleading at best, where the Maryland Appellate Court did not even reach the issue of retroactivity: "Given that § 15-207 does not provide a basis for injunctive relief on behalf of Herb Gordon, either interlocutory or final, we need not address appellants' arguments regarding retroactivity." In that case, the issue addressed by the court was not the retroactive application or effect of an amendment to a relevant market area provision, but rather was an issue of whether the challenging dealer had any right to an injunction prohibiting the manufacturer from establishing a like-line dealership near his dealership. [1] Ultimately, the court concluded that the Maryland Dealer Act did not provide the challenging dealership with the protections that the dealership believed it did.

[1] At the time of this case being decided, Maryland's dealer act did not contain a section limiting a dealership's relevant market area: "In 1989 and 1990, RMA legislation proposed by the Maryland New Car and Truck Dealers Association (Association) was pending in the Maryland House of Delegates as House Bills 1375 and 421 respectively. Ultimately, the proposals were withdrawn by the Association because of disagreement within the Association regarding sponsorship of the bills." *Antwerpen Dodge v. Herb Gordon Auto World*, 117 Md App 290, 313; 699 A.2d 1209 (1997)

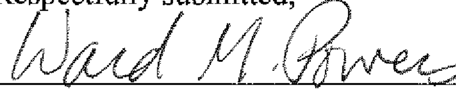
Finally, IHS's reliance on *In re Kerry Ford, Inc.*, 666 NE2d 1157 (1995) is improper, where the dealer agreement at issue in that case expressly required a showing of good cause if a new dealer was added within *10 miles* of an existing dealership. The 10 mile radius was expressly defined in the dealer agreement and not merely a provision contained in the Ohio Dealer Act. It is undisputed that the Dealer Agreement in the case at bar does not define LaFontaine's "relevant market area". Accordingly, based upon Michigan case law and the factually aligned cases from other jurisdictions, it is clear that the Court of Appeals holding was not in error and should be affirmed by this Court.

CONCLUSION

Based on the foregoing, Lafontaine respectfully requests that this Court affirm the Court of Appeals' November 27, 2012 decision.

Dated: December 27, 2013

Respectfully submitted,



Ward M. Powers (P33739)
302 W. Main St.
Northville, MI 48167
(248) 347-1700
Attorney for Appellee LaFontaine Chrysler Jeep Dodge Ram

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EASTERN SPORT CAR SALES, INC., a Michigan corporation, Plaintiff, v. FIAT MOTORS OF NORTH AMERICA, INC., a New York corporation, Defendant.

Civil No. 84CV4738DT

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

1985 U.S. Dist. LEXIS 24081

June 5, 1985, Decided
June 5, 1985, Filed

COUNSEL: [*1] For EASTERN SPORT CAR SALES, PLAINTIFF: EDWARD M. KRONK, BUTZEL, LONG, GUST, KLEIN & VAN ZILE, DETROIT MI.

For FIAT MOTORS OF NORTH AMERICA, DEFENDANT: Lawrence G. Campbell, DICKINSON, WRIGHT, MOON, VAN DUSEN & FREEMAN, Detroit, MI.

JUDGES: Robert E. DeMascio, United States District Judge.

OPINION BY: Robert E. DeMascio

OPINION

MEMORANDUM OPINION

Plaintiff, Eastern Sport Car Sales, Inc. (Eastern) filed this action in Wayne County Circuit Court against defendant, Fiat Motors of North America, Inc., (Fiat), alleging violations of the Michigan Automobile Dealership Act, *Mich. Comp. Laws §§ 445.1561 et seq.* (1981) and seeking declaratory relief that said statute is applicable. Defendant timely removed this action from state court on the basis of diversity of citizenship, *42 U.S.C. § 1441*. Presently before the court are cross motions for summary judgment.

Beginning in April 1967, Eastern entered into a dealer sales and service agreement with defendant's successor to sell Fiat automobiles. In March 1976, this agreement was re-drafted and Fiat, as successor manufacturer, became a party to the agreement. Paragraph Tenth of the agreement provides:

> This Agreement is to be governed by, and construed according to, the laws of the [*2] State of New York. It is understood, however, that it is a general form of agreement designated for use in any state; and it is therefore agreed that any provision herein contained which in any way contravenes the laws of any state or constituted authority which may apply to this Agreement, shall be deemed to be deleted herefrom.

On January 23, 1983, Fiat notified Eastern that its agreement would be terminated. No one disputes the fact that Fiat had the right to terminate the agreement and that the conditions precedent for termination had been satisfied. The dispute between the parties arises over the applicability of the Michigan act, which became effective July 19, 1981 and sets forth procedures to be followed by automobile manufacturers after terminating a dealership agreement. Fiat contends that the act is applicable only to those agreements entered into after July 19, 1981, while Eastern contends that the act is applicable to any dealership agreement that is terminated after that date.

Section 445.1561 was enacted to replace *Mich. Comp. Laws §§ 445.521 et. seq.* (1978). The stated purpose of *§ 445.1561* is:

> to regulate motor vehicle manufacturers, distributors, wholesalers, dealers, [*3] and their representatives; to regulate dealings between manufacturers and distributors or wholesalers and their dealers; to regulate dealings between manufacturers, distributors, wholesalers, dealers, and consumers; to prohibit unfair practices; to provide remedies and penalties; and to repeal certain acts and parts of acts.

The legislative history behind *§ 445.1561*, as set forth in the Senate Analysis Report, indicates that it was enacted not merely for the protection of new dealers, but also, and perhaps primarily, for existing dealers facing the potential threat of termination or unfair competition from new dealers in their geographic sales zone:

> Despite the enactment of Public Act 331 of 1978, which was an attempt to regulate auto manufacturer-dealer relationships, some people feel that problems still remain and that dealers need further protection. One concern is the practice by manufacturers of establishing new dealerships in areas which are already being served by existing dealers, thus threatening the economic well-being of the existing dealers. A second concern is the termination of dealer agreements by the manufacturers for what some feel are arbitrary reasons. Agreements are [*4] supposed to be terminated only for 'good cause' but some have argued that 'good cause' is not adequately defined in the law.

While the Michigan courts have never addressed this issue with respect to this particular statute, the Michigan Court of Appeals, in *Anderson's Vehicle Sales, Inc. v. OMC-Lincoln 93 Mich. App. 404, 287 N.W.2d 247 (1979)*, addressed the issue with respect to the 1978 act. The court rejected the argument that the statute was meant to apply only to those dealership agreements that were entered into after July 11, 1978, the effective date of the act. Rather, the court held that the statute applies to all dealership agreements that are terminated after the effective date of the act. This analysis has equal application to the 1981 Act. Not only did the 1981 Act replace the 1978 Act, but both acts have the same express purpose and similar remedy provisions.

Fiat also contends that the 1981 Act is constitutionally infirm on due process and contract clause grounds. In determining whether the Michigan Automobile Dealership Act violates the contract clause, the relevant inquiry is whether the act substantially impairs the parties' contractual relationship. See *Energy Reserves Group v. Kansas Power & Light, 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1982).* [*5] We find that the statute impacts on the amount of notice required for termination and certain economic rights and obligations upon termination. We note, however, that the contract itself makes reference to state law and deletes any portion of the contract that is in contravention of that law. Moreover, the automobile manufacturer-dealer industry is one that can reasonably expect to be regulated. It has historically been regulated, by virtue of the 1978 Act and its predecessors. We conclude that the 1981 Act does not substantially impair the parties' contractual relationship.

Even assuming that Fiat could demonstrate that the act substantially impairs its contract rights with Eastern, the state has a significant and legitimate public purpose in enacting the 1981 Act, i.e., to remedy broad economic problems existing between automobile manufacturers and their dealers. The ultimate beneficiary is the automobile consumer.

Thus, for the above reasons, in addition to those set forth on the record, we conclude that *Mich. Comp. Laws §§ 445.1561 et. seq.* is applicable to the termination of the dealership agreement between Eastern and Fiat.

Accordingly, Eastern's motion for summary judgment will [*6] be granted and defendant's motion for stay will be denied as moot.

IT IS SO ORDERED.

/s/ Robert E. DeMascio

Robert E. DeMascio

United States District Judge

Dated: JUN 5, 1985