

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

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ELLEN M. ANDARY, a legally incapacitated adult, by and through her Guardian and Conservator, MICHAEL T. ANDARY, M.D., PHILIP KRUEGER, a legally incapacitated adult, by and through his Guardian, RONALD KRUEGER, & MORIAH, INC., d/b/a EISENHOWER CENTER, a Michigan corporation,

Plaintiffs,

Case No. 19-738-CZ

v

Honorable Wanda M. Stokes

USAA CASUALTY INSURANCE COMPANY, a foreign corporation, and CITIZENS INSURANCE COMPANY OF AMERICA, a Michigan corporation,

Defendants.

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George T. Sinas (P25643)  
Stephen H. Sinas (P71039)  
Thomas G. Sinas (P77223)  
Lauren E. Kissel (P82971)  
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PLAINTIFF'S MOTION TO AMEND COMPLAINT

Plaintiffs, by and through their attorneys, Sinas, Dramis, Larkin, Graves & Waldman, P.C., hereby request that this Honorable Court grant them leave to amend their complaint pursuant to MCR 2.118 for the following reasons:

1. Plaintiffs seek leave to amend their complaint pursuant to MCR 2.118 to add a count for breach of contract pursuant to *Lafontaine Saline, Inc v Chrysler Group, LLC*, 496 Mich 26 (2014), as is more fully discussed in plaintiffs' Motion for Reconsideration, filed concurrently with this motion.

2. Pursuant to MCR 2.118(A)(2), a party may amend a pleading by leave of the court.

3. The Michigan Court Rules make it clear that leave to amend "*shall be freely given when justice so requires.*" MCR 2.118(A)(2).

4. Furthermore, MCR 2.116(I)(5) specifically provides that, where a party files a motion for summary disposition that is predicated on either MCR 2.116(C)(8), (9) or (10), "*the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118.*" The language of MCR 2.116(I)(5) is mandatory in character; it provides that a court *shall* give the nonmoving party an opportunity to amend. See *Liggett Restaurant Group, Inc. v Pontiac*, 260 Mich App 127, 138 (2003).

5. In Plaintiffs' Brief in Opposition to the Motion to Dismiss Filed by Defendants pursuant to MCR 2.116(C)(8), plaintiffs requested the right to amend their complaint on the basis of MCR 2.116(I)(5) to state a claim for breach of contract pursuant to *Lafontaine*, as is further discussed in plaintiff's Motion for Reconsideration.

6. In its November 13, 2020 opinion, the court did not address plaintiffs' request to amend their complaint pursuant to MCR 2.116(I)(5), nor did the court address, in any way, the *Lafontaine* principle.

7. Accordingly, pursuant to MCR 2.118(A)(2) and MCR 2.116(I)(5), plaintiffs should be given leave to amend their complaint to add a claim asserting the *Lafontaine* principle and related contract claims and causes of action, as is more fully discussed in plaintiffs' concurrent Motion for Reconsideration.

WHEREFORE, plaintiffs respectfully request that this Honorable Court grant their Motion to Amend and allow plaintiffs to file an amended complaint.

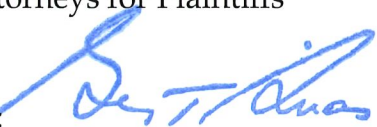
Respectfully submitted:

**SINAS, DRAMIS, LARKIN,  
GRAVES & WALDMAN, P.C.**

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Dated: December 4, 2020

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