

STATE OF MICHIGAN
IN THE SUPREME COURT

PROGRESS MICHIGAN,

Plaintiff-Appellant,

v.

ATTORNEY GENERAL,

Defendant-Appellee,

Supreme Court No. 158150-1

Court of Appeals No. 340921, 340956

Court of Claims No. 17-000093-MZ

APPELLANT'S SUPPLEMENTAL APPENDIX

ORAL ARGUMENT REQUESTED

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

PROGRESS MICHIGAN

Plaintiff-Appellee

Court of Appeals No. [#]

Court of Claims No. 17-000093-MZ

v

ATTORNEY GENERAL BILL
SCHUETTE, in his official capacity

Defendant-Appellant

CLAIM OF APPEAL

Defendant-Appellant Attorney General Bill Schuette, by and through his attorneys, pursuant to MCR 7.203(A)(1) and MCR 7.209(E)(6), claims an appeal from the Opinion and Order denying, in part, Defendant's Motion for Summary Disposition entered on October 16, 2017, in the Court of Claims by the Honorable Cynthia D. Stephens. Pursuant to MCR 7.202(6)(a)(v), the October 16, 2017, Opinion and Order is a final order because it is an order denying governmental immunity to a governmental official under MCR 2.116(C)(7).

In accordance with MCR 7.204(C)(1), a copy of the Opinion and Order dated October 16, 2017, has been attached as Exhibit 1.

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Aaron D. Lindstrom (P72916)
Solicitor General

Counsel of Record

Laura Moody (P51994)
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/s/Christina M. Grossi
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Dated: November 2, 2017
2017-0177259-B

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PROGRESS MICHIGAN,

Plaintiff-Appellee,

v

ATTORNEY GENERAL BILL
SCHUETTE, in his official capacity,

Defendant-Appellant.

Court of Appeals No. [#]

Court of Claims No. 17-000093-MZ

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other State governmental action is invalid.

DEFENDANT ATTORNEY GENERAL BILL SCHUETTE'S APPLICATION
FOR LEAVE TO APPEAL

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Dated: November 6, 2017

STATEMENT OF JURISDICTION

Appellant Bill Schuette (hereinafter "Department") files an application for leave to appeal from the Court of Claims' opinion and order dated October 16, 2017, denying Defendant's motion for summary disposition based on a statute of limitations under MCR 2.116(C)(7). The Department has also filed a claim of appeal from the same opinion and order based on the Court's denial of the Department's claim of governmental immunity under MCR 2.116(C)(7). See Case No. 340921.

For the reasons discussed more fully herein, the issues presented in this Application are closely intertwined with the issues that will be considered by this Court in the Department's claim of appeal. More specifically, the claim of appeal presents the question of whether a complaint that fails to satisfy the pre-conditions to bringing suit against the State as required by the Court of Claims Act can be amended. If this Court answers "yes" to that question, this Application presents the question of whether that amended complaint "relates back" to the initially deficient complaint for purposes of the statute of limitations.

STATEMENT OF QUESTION PRESENTED

1. MCR 2.118(D) provides that an amended complaint that adds a claim or defense that arose out of the conduct, transaction, or occurrence set forth in the original complaint relates back to the date of the original complaint. Did the Court of Claims err in holding that Progress Michigan's amended complaint relates back to the date of its original complaint when the amendment did not add a claim or defense?

Appellant's answer: Yes.

Appellee's answer: No.

Trial court's answer: No.