

**STATE OF MICHIGAN
IN THE SUPREME COURT**

LYNN PEARCE, Personal Representative of the
Estate of BRENDON PEARCE, Deceased,

Plaintiff/Appellant,

SUPREME COURT
DOCKET NO. 158069

-vs-

COURT OF APPEALS
DOCKET NO. 338990

THE EATON COUNTY ROAD COMMISSION,

Defendant/Appellee

EATON COUNTY CIRCUIT
COURT FILE NO. 16-29-NI

and

LAWRENCE BENTON, Personal Representative
of the Estate of MELISSA SUE MUSSER,
Deceased and PATRICIA JANE MUSSER,

Defendants.

MCR 7.312(I) STATEMENT OF SUPPLEMENTAL AUTHORITY

Respectfully submitted by:

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As indicated within Plaintiff/Appellant's Application for Leave to Appeal at page 17, footnote 2, the Midland County Road Commission filed its Motion for Reconsideration on June 5, 2018 along with its supplemental authority in *Tim Edward Brugger, II v Midland County Board of Road Commissioners*, _____ Mich App ____; _____ N.W. 2d ____; 2018 WL 222848.

The Court of Appeals issued its Order denying the Road Commission's Motion for Reconsideration on July 12, 2018, further ordering that its decision be provided to the Supreme Court Reporter of Decisions for publication in the Michigan Appeals Reports. A copy of the Order is annexed hereto.

The *Brugger* Court specifically addressed the panel's decision in the present appeal i.e. *Harston v Eaton County Road Commission*, _____ Mich App ____; _____ N.W. 2d ____; (2018); (Docket No: 338981) which held that *Streng v Board of Mackinac County Road Commissioners*, 315 Mich App 449; 890 N.W. 2d 680 (2016) was to be applied retroactively. The *Brugger* Court noted that *Harston* was decided after *Brugger* and, as the first published Court of Appeals case to decide the issue of *Streng's* retroactivity, determined that *Brugger* controls. Consequently, the *Brugger* Court felt that its decision had precedential effect as a published decision pursuant to MCR 7.215(J) which provides:

“Precedential Effect of Published Decisions. A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court or a special panel of the Court of Appeals as provided in this rule.”

In ruling that its decision in *Brugger* was binding precedent, the Court specifically held:

“The “first-out” rule act forth in MCR 7.215(C)(2) was adopted due to the confusion created by conflicting decision by different panels of this Court. Unfortunately, the *Harston* decision has resulted in exactly the type of confusion the rule was intended to avoid. That confusion is unwarranted. Our published opinion in this case was the first Court of Appeals' decision addressing the retroactivity of *Streng* and so is precedentially binding pursuant to MCR 7.215(C)(2). *Harston* was the second case addressing the issue and is not precedentially binding.”

Consequently, to the extent that the *PEARCE* panel relied upon *W.A. Foote Memorial Hospital v Michigan Assigned Claims Plan*, 321 Mich App 159; 909 N.W. 2d 38 (2017), in reversing the Trial Court's denial of Appellee's Motion for Summary Disposition, such reliance is clearly erroneous and conflicts with *Brugger's* holding as a “first-out” decision. *Streng*, therefore applies prospectively and the Court of Appeals must be reversed.

Dated this 26th day of July, A.D., 2018.

COLLISON & COLLISON

/s/ Joseph T. Collison

JOSEPH T. COLLISON, J.D.
Attorneys for Plaintiff/Appellant

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