

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

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

Plaintiff/Appellant,

-vs-

THE EATON COUNTY ROAD COMMISSION,

Defendant/Appellee

and

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

Defendants.

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SUPREME COURT  
DOCKET NO. 158069

COURT OF APPEALS  
DOCKET NO. 338990

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

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**MCR 7.312(I) STATEMENT OF SUPPLEMENTAL AUTHORITY**

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Respectfully submitted by:

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Plaintiff/Appellant filed Application for Leave to Appeal the June 7, 2018 Court of Appeals decision in *Harston v Eaton County Road Commission*, 324 Mich App 547 (2018) which held that *Streng v Board of Mackinac County Road Commissioners*, 315 Mich App 449 (2016) was to be applied retroactively.

Plaintiff/Appellant's Supplemental Authority, *Tim Edward Brugger, II v Midland County Board of Road Commissioners*, 324 Mich App 307 (2018) which was a "first-out" decision pursuant to MCR 7.215(C)(2) and which was decided before *Harston*, specifically held that *Streng* was to be applied prospectively following its analysis of the "three-factor test" set forth in *Pohutski v City of Allen Park*, 465 Mich 675 (2002).<sup>1</sup>

This Court then issued its Order that Plaintiff/Appellant's Application be held in abeyance pending a decision in *W A Foote Memorial Hospital v Michigan Assigned Claims Plan*, (Docket No. 156622).

On October 25, 2019 this Court decided *Foote* (Exhibit B) and reversed that part of the judgment of the Court of Appeals stating that this Court's decision in *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503 (2012) "effectively repudiated" the application of the "threshold question" and "three-factor test" set forth in *Pohutski*, in the context of judicial decisions of statutory interpretation.

However, this Court affirmed retroactive application of *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Com*, 500 Mich 191 (2017), specifically noting that the *Spectrum* Court "engaged in an analysis that is consistent with the analysis required by *Pohutski's* threshold question". (emphasis supplied)

In the present Appeal, the *Harston* Court, unlike the *Brugger* Court, did not engage in such an analysis as required. Consequently, both as a "first-out" case and because the proper analysis under *Pohutski* was performed, *Brugger* controls. *Streng* has prospective application and the Court of Appeals decision in *Harston*, ruling otherwise, must be reversed.

Dated this 20<sup>th</sup> day of November, A.D., 2019.

COLLISON & COLLISON

/s/ Joseph T. Collison

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

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<sup>1</sup> *Pohutski's* "three-factor test" was also applied by the Trial Court which held that it would be improper to give *Streng* retroactive effect, given the fact that Plaintiffs followed the well-established rule of law at the time their suits were filed and that it would be detrimental to the Administration of Justice to bar their claims based on a change in the interpretation of law. A copy of the Trial Court's Opinion is annexed hereto as Exhibit A.