

# Court of Appeals, State of Michigan

## ORDER

Ryan Harston v County of Eaton  
Estate of Brendon Pearce v Eaton County Road Commission

Docket Nos. 338981; 338990

LC No. 15-001226-NI; 16-000029-NI

Peter D. O'Connell  
Presiding Judge

Kirsten Frank Kelly

Michael J. Riordan  
Judges

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On August 31, 2017, this Court issued *W A Foote Mem Hosp v Mich Assigned Claims Plan*, 321 Mich App 159; 909 NW2d 38 (2017), applying the retroactivity test announced in *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 536; 821 NW2d 117 (2012), to hold that the Supreme Court's decision in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191; 895 NW2d 470 (2017), applied retroactively.

On May 16, 2018, this Court issued *Brugger v Midland Co Bd of Rd Commr's*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2018) (Docket No. 337394), applying the retroactivity rules in *Pohutski v City of Allen Park*, 465 Mich 675, 695-696; 641 NW2d 219 (2002), to hold that *Streng v Bd of Mackinac Rd Comm'rs*, 315 Mich App 449; 890 NW2d 680 (2016); slip op at 4-5, only applies prospectively.

On the Court's own motion, we direct the parties to brief whether *W A Foote Mem Hosp* or *Brugger* controls this case. Appellant and appellees must file their principal briefs on this issue within seven days of the Clerk's certification of this order, and appellant may file a reply brief no later than seven days after the filing of appellees' briefs.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 21 2018

Date

  
Chief Clerk