

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,225

FILED
SID J. WHITE
JUN 2 1987
CLERK SUPREME COURT
By _____
Deputy Clerk

JOSE LUIS MELENDEZ, :
Petitioner, :
vs. :
DREIS & KRUMP MANUFACTURING :
COMPANY, :
Respondent. :

ON REVIEW OF A DECISION OF THE DISTRICT
COURT OF APPEAL, THIRD DISTRICT

REPLY BRIEF OF PETITIONER, JOSE LUIS MELENDEZ

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II. IF NOT, SHOULD THE DECISION OF <u>PULLUM v. CINCINNATI, INC.</u> , 476 So.2d 657 (Fla. 1985), <u>APPEAL DISMISSED</u> , _____ U.S. _____, 106 S.Ct. 1626, 90 L.Ed.2d. 174 (1986) WHICH OVERRULED <u>BATTILLA V. ALLIS CHALMERS MFG. CO.</u> , 392 So.2d 874 (Fla. 1980), APPLY SO AS TO BAR A CAUSE OF ACTION THAT ACCRUED AFTER THE <u>BATTILLA</u> DECISION BUT BEFORE THE <u>PULLUM</u> DECISION?	
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ISSUES ON REVIEW

I.

SHOULD THE LEGISLATIVE AMENDMENT OF SECTION 95.031(2), FLORIDA STATUTES (1983) ABOLISHING THE STATUTE OF REPOSE IN PRODUCT LIABILITY ACTIONS, BE CONSTRUED TO OPERATE RETROSPECTIVELY AS TO A CAUSE OF ACTION WHICH ACCRUED BEFORE THE EFFECTIVE DATE OF THE AMENDMENT?

II.

IF NOT, SHOULD THE DECISION OF PULLUM v. CINCINNATI, INC., 476 So.2d 657 (Fla. 1985), APPEAL DISMISSED, U.S. ____, 106 S.Ct. 1626, 90 L.Ed.2d. 174 (1986) WHICH OVERRULED BATTILLA v. ALLIS CHALMERS MFG. CO., 392 So.2d 874 (Fla. 1980), APPLY SO AS TO BAR A CAUSE OF ACTION THAT ACCRUED AFTER THE BATTILLA DECISION BUT BEFORE THE PULLUM DECISION?

REPLY ARGUMENT

The Appellees commence their argument with the unsupported proposition that statutes of repose are substantive and not procedural in nature. It is evident that statutes of repose like statutes of limitation do not establish substantive rights and responsibilities, but merely prescribe the manner in which such rights may be exercised and enforced. As such, statutes of repose are procedural in nature. Appellees reliance on Walker & Laberge, Inc. v. Halligan, 344 So.2d 239 (Fla. 1977) is simply misplaced. Walker & Laberge, Inc. involves the application of a clearly substantive statutory right - the right to be immune from suit. The statute of repose, which was given new life by this Court in Pullum v. Cincinnati, Inc., 476 So.2d 657 (Fla. 1985), was merely "a resurrection of a procedural defense that did not exist and could not have been foreseen." Home Insurance Company v. Advance Machine Company, 500 So.2d 664, 669 (Fla. 1st DCA 1986).

Appellee further contends that even if the statute of repose is procedural in nature, the cases of Foley v. Morris, 339 So.2d 215 (Fla. 1976) and Homemakers, Inc. v. Gonzales, 400 So.2d 965 (Fla. 1981) prohibit retroactive application of the now repealed statute of repose. These cases merely hold that an amended statute of limitations will be applied prospectively unless the legislature

manifests its intent to provide retroactive application. As previously addressed in Appellant's main brief, the Florida legislature has manifested its intent that the repeal of the statute of repose be given retroactive application.

Furthermore, the cases relied upon by the Appellee involve the amendment of the statute of limitations in medical malpractice actions. The statute of limitations in medical malpractice actions was shortened by the Florida Legislature from four years to two years. Chapter 86-272, Laws of Florida (1986) did not shorten or lengthen the statute of repose in product liability actions. The legislature simply abolished any requirement that product liability actions be commenced within twelve years after the date of delivery of the completed product to the original purchaser. The statute of repose was not amended but specifically repealed. Under the general rules of statutory construction, repealing legislation must be given retroactive application. Yaffee v. International Company, Inc., 80 So.2d 910 (Fla. 1955), Bureau of Crimes Compensation, Department of Labor and Employment Security v. Williams, 405 So.2d 747 (Fla. 2nd DCA 1981).

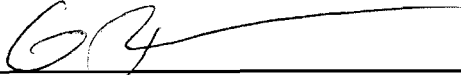
CONCLUSION

The first certified question should be answered in the affirmative. If the first certified question is answered in the negative, then the second certified question additionally must be answered in the negative.

Respectfully submitted,

RESS, GOMEZ, ROSENBERG,
HOWLAND AND MINTZ, P.A.

BY



KEITH A. TRUPPMAN

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing Main Brief of Petitioner, Jose Luis Melendez, has been mailed this 29th day of May, 1987 to Frederick Lewis, Esquire, Magill & Lewis, P.A., 730 Ingraham Building, 25 Southeast Second Avenue, Miami, Florida, 33131.

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