

IN THE SUPREME COURT OF FLORIDA

FILED  
SID J. WHITE  
SEP 8 1987  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk

EDWARD PURTY,  
Petitioner,

vs.

MCDONNELL DOUGLAS CORPO-  
RATION,

Respondent.

Case No.: 70-752  
THIRD DISTRICT COURT  
Case No.: 86-1041

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PETITIONER/APPELLANT'S REPLY BRIEF

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## ARGUMENT

In deference to the Court and in recognition of the overwhelming number of cases concerning the same certified question, MR. PURTY limits his reply to a response to two areas.

McDONNELL DOUGLAS argues that to apply retroactively §95.031(2), Fla. Stat. (1986), "would deprive McDONNELL DOUGLAS of a substantive vested right not to be sued." (Respondent's Brief at 11) This is absurd since at the time of MR. PURTY'S injury, the statute of repose had been declared unconstitutional by Battilla. Rather, MR. PURTY respectfully contends that at the time this action was commenced, he possessed a vested right to redress. He had more than a "mere expectation". He had a promise of constitutional dimension.

The Florida Legislature in its enactment of 95.031(2), Fla. Stat. (1986), recognized and established its intention that tort victims such as MR. PURTY should not go uncompensated for injuries suffered at the hand of another. (See McDONNELL DOUGLAS' Appendix at page 40) Presently, a party may bring a lawsuit against a manufacturer whose product caused injury after being in the stream of commerce in excess of twelve (12) years. Adopting McDONNELL DOUGLAS' reasoning, only those having filed and pending cases in the interim from November 4, 1985, to July 1, 1986, are exposed

to the effect of Pullum. Those litigants fortunate enough to resolve their cases prior to November 4, 1985, or forestall a decision until after July 1, 1986, escape. It seems a harsh and unfair result to bar MR. PURTY and others similarly situated from redress simply by the inappropriate timing of their injuries. Retrospective application of §95.031(2), Fla. Stat. (1986) achieves the legislature's intent and avoids an inequitable result to MR. PURTY and the many others whose actions were decided during this seven month period.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to: DOUGLAS CHUMBLEY, ESQ., 900 Brickell Centre, 799 Brickell Plaza, Miami, FL 33131 this 2nd day of September, 1987.

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