IN THE SUPREME COURT OF FLORIDA

CASE NO. 70-099

WILLIAM A. BRACKENRIDGE,

Petitioner,

vs.

AMETEK, INC. and BARING INDUSTRIES, INC.,

Respondent.

BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

In September of 1967 a laundry extractor was manufactured and distributed by the Defendants, Ametek, Inc. and Baring Industries, Inc. On December 14, 1982, the Plaintiff, William Brackenridge's right arm was traumatically amputated by the Defendants' laundry extractor. On December 11, 1984, Brackenridge filed suit alleging negligence and strict product liability.

Approximately one year after Brackenridge filed suit, the Florida Supreme Court issued its opinion in Pullum v. Cincinatti, Inc., 476 So.2d 657 (Fla. 1985), receding from its earlier ruling in Battilla v. Allis Chalmers Manufacturing Co., 392 So.2d 874 (Fla. 1980), and held that Florida Statute Section 95.031(2), the twelve year product statute of repose, was constitutional. The Defendants moved for summary judgment on the issue of the statute of repose. The trial court entered summary judgment against Brackenridge on the basis of Pullum and held that Brackenridge's suit was barred. The Plaintiff's appeal of the summary judgment to the Third District Court of Appeal was denied on February 10, 1987.

The Third District Court of Appeal certified the following questions to the Florida Supreme Court:

> 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 Batilla decision but before the Pullum decision?

PREFACE AND SUMMARY OF ARGUMENT

Brackenridge seeks reversal of the Summary Judgment entered against him. The issues are first, whether Pullum v. Cincinnati, Inc., 476 So. 2d 657 (Fla. 1985), may be retroactively applied to bar Brackenridge's law suit which was pending for over one year before Pullum was decided; and secondly, whether the legislative amendment of Florida Statute Section 95.031(2), abolishing the statute of repose in product liability actions, should be applied retroactively to a cause of action which accrued before the effective date of the amendment.

First, the trial court erred in entering summary judgment against Brackenridge because Pullum cannot be applied retroactively to Brackenridge or other cases pending at the time Pullum was decided. When Brackenridge was injured and when he filed his suit, the controlling law provided him four years from the date of his injury to file his lawsuit. The twelve-year product liability statute of repose had been held unconstitutional by the supreme court in 1980. Florida and federal law clearly provide that a court of last resort overruling a former judicial construction of a statute cannot be retroactvely applied to divest one of his property or contract rights acquired in reliance upon the prior construction given the statute. When Brackenridge filed his lawsuit pursuant to the law in effect, he acquired a property interest and a vested right to pursue his claim. Brackenridge's vested property right cannot be retroactively destroyed, for to do so would violate his due process rights.

Secondly, the legislative repeal of the product liability statute of repose shortly after Pullum was decided operates retroactively to pending causes of action, as in Florida repealing and remedial statutes apply retrospectively. The legislative history of the statute of repose, the legislative intent in repealing the statute of repose, justice and equity compel retrospective application of the repealer act to pending causes of action.

ARGUMENT

I.
History of Statute of Repose

In 1975, the Florida legislature enacted Florida Statute Section 95.031(2), the product liability statute of repose. The statute provided that an action for product liability must be commenced no later than twelve years after the date of delivery of the completed product to the original purchaser. In addition to the statute of repose, the relevant statute of limitations, Florida Statute Section 95.11 (3)(e), provided that an action for product liability must be commenced within four years from the time the facts giving rise to the cause of action were discovered or should have been discovered with due diligence.

These two statutes were intended to operate complimentarily, with an action to be brought in any event within twelve years from the date of delivery of the product to its original purchaser, regardless of the date the defect in the product was or should have been discovered. This gave individuals who were injured by products less than eight years after the delivery date four years within which to bring a lawsuit, individuals who were injured between eight and twelve years after the delivery date less than four years in which to file suit, depending when in that time period they were injured, and lastly, it barred individuals injured twelve or more years after product delivery from filing suit.

The Florida Supreme Court has distinguished statutes of limitation from statutes of repose:

> Rather than establishing a time limit within which [an] action must be brought, measured from the time of accrual of the cause of action, these [statutes of repose] provisions cut off the right of action after a specified time measured from the delivery of a product or the completion of work. They do so regardless of the accrual of the cause of action or of notice of the invasion of a legal right.

Universal Engineering Corp. v. Perez, 451 So. 2d 463 (Fla. 1984). Both statutes limit the time period within which a plaintiff may bring suit, but there are important differences between the two statutes. The statute of limitations limits the time within which a plaintiff may bring suit after the cause of action accrues, whereas the statute of repose potentially bars the plaintiff's suit before the cause of action arises.

On December 11, 1980, the Florida Supreme Court held the statute of repose unconstitutionally barred access to courts to litigants injured by products more than twelve years after the delivery date, in violation of Article I, Section 21, of the Florida Constitution. Battilla v. Allis Chalmers Manufacturing Co., 392 So.2d 874 (Fla. 1980). Battilla involved a plaintiff like Brackenridge who was injured more than twelve years after the delivery of the defective product. The Court held the statute unconstitutional as applied to this plaintiff, as it completely barred the plaintiff's cause of action before it accrued. Battilla amended the statute of repose to provide that plaintiffs who

were injured by defective products less than eight years or more than twelve years after the delivery date had four years to file suit and plaintiffs who were injured by defective products somewhere in the eight to twelve year period after product delivery had less than four years in which to file suit, depending when in that time frame they were injured. The reason for this result was that plaintiffs injured between eight and twelve years after product delivery were not completely barred from bringing their cause of action, they merely had less time to file, and the statute of repose was not unconstitutional as applied to these plaintiffs.

In Pullum v. Cincinnati, Inc., 476 So.2d 657 (Fla. 1985) the Plaintiff fell into the eight to twelve year class. Pullum's hands were crushed in a pressbrake machine on April 29, 1977. The pressbrake was shipped to the original purchaser on November 11, 1966. Thus, the injury took place less than eleven years after the original delivery. Plaintiff filed suit on November 25, 1980, less than four years after his injury, but more than twelve years after delivery of the pressbrake to the original purchaser. Thus, while Pullum's injury occurred before the twelve-year statute of repose, he did not file suit until after the twelve-year period. The trial court granted summary judgment in favor of the defendant based on the statute of repose, Florida Statute Section 95.031(2).

Pullum appealed to the Fourth District Court of Appeal and argued that the statute of repose, as amended by Battilla, violated his constitutional rights to equal protection by arbitrarily providing him and similar plaintiffs less than four years in which to file suit because they fell in the eight to twelve year period. Pullum did not argue that he was denied access to courts, as prior supreme court decisions held that a mere shortening of time to file suit is not a denial of access to courts. Universal Engineering Corp. v. Perez, 451 So.2d 463 (Fla. 1984); Purk v. Federal Press Co., 387 So.2d 354 (Fla. 1980). The district court affirmed, holding that the statute of repose did not deny Pullum equal protection. The district court certified the question to the Florida Supreme Court as being of great public importance.

In his brief to the supreme court, Pullum argued that the unequal treatment between people injured less than eight years or more than twelve years after product delivery on the one hand, and people injured between eight to twelve years on the other hand, is purely arbitrary and the supreme court should declare the accidental classifications under the mutant section 95.031(2) irrational, purposeless and unconstitutionally violative of the equal protection guarantees. The only question before the supreme court was whether the "amended" statute of repose violated Pullum's equal protection rights by giving him less than four years in which to file suit.

The Florida Supreme Court reversed its earlier decision in Battilla and declared that the statute of repose was indeed constitutional, even as to injuries occurring more than twelve years after product delivery. Pullum v. Cincinnati, Inc., 476 So. 2d 657 (Fla. 1985). It did not state whether Pullum applied retroactively to accrued causes of action.

At its first opportunity following the decision in Pullum, the legislature repealed the product liability statute of repose and nullified Pullum. The repealer statute became effective July 13, 1986, while this case was pending before the Third District Court of Appeal.

II.
PULLUM SHOULD NOT BE APPLIED RETROACTIVELY TO BAR A CAUSE OF ACTION THAT ACCRUED AFTER BATTILLA BUT BEFORE PULLUM

The Florida Supreme Court clearly set forth the standard for determining the retroactive application of judicial interpretations of statutes in Florida Forest and Park Service v. Strickland, 18 So.2d 251 (1944). Strickland involved a situation similar to Pullum, in that the supreme court initially gave one construction to a statute and subsequently reversed itself. The supreme court held that while ordinarily a decision of a court of last resort overruling a former decision is retrospective, there is a "common sense exception to the rule":

> The rights, positions and courses of action of parties who have acted in conformity with, and in reliance upon, the construction given by a court of final decision to a statute should not be impaired or abridged by reason of a change in judicial construction of the same statute made by a subsequent decision of the same court in overruling its former decision.
> (Emphasis supplied). Id. at 253.

In Brackenridge, Pullum should be given prospective application only, as in Strickland.

The key to the "prospective only" application in Strickland was that property rights had been acquired by the workmen's compensation claimant under the prior judicial construction of the statute. At the time Strickland filed his workmen's compensation claim he relied on the then controlling case of Johnson v. Midland Constructors, Inc., 150 Fla. 353, 7 So. 2d 449 (Fla. 1942), which construed the workmen's compensation statute to provide for direct appeal of a deputy commissioner's ruling to the circuit court. Strickland, in reliance on Johnson, successfully appealed an adverse commissioner's ruling to the circuit court. Strickland's employer then appealed the circuit court's judgment to the district court of appeal. While the appeal was pending, the Florida Supreme Court re-examined the statutory law pertaining to the procedure providing for review of workmen's compensation orders and held in Tigertail Quarries, Inc. v. Ward, that there was no right of direct appeal to the circuit court from a deputy commissioner's ruling. 16 So. 2d 812 (Fla. 1944).

Tigertail overruled Johnson, which was the controlling law at the time Strickland filed his appeal, and Strickland's employer argued to the supreme court that Tigertail should retroactively apply to bar Strickland's appeal to the circuit court. The supreme court, in determining that Tigertail should have prospective application only, stated:

> A right to compensation having accrued, at least potentially, by the happening of the injury, and the compensation claimant having proceeded by a judicially approved statutory course of procedure to enforce the claim, such valuable potential property or contract right to compensation should not be cut off by subsequent overruling court decision given a retrospective operation. We hold, therefore, that as applied to the facts of this case, Tigertail Quarries, Inc. v. Ward, supra, must be given a prospective operation only; the facts bringing the case within the exception to the generally prevailing rule that court decisions will be given a retrospective as well as prospective operation. To hold otherwise would be, in effect, to deprive the claimant of a potentially valuable claim accruing by reason of his contract of employment prior to the overruling decision, the right to which he has sought to have judicially established by the only court of competent jurisdiction which may try the matter as an original judicial controversy.
> Strickland at 254 (emphasis supplied).

This court clearly recognized in Strickland that the potential right to compensation which accrues at the time of injury is a property right protected by the due process clause. That is the essence of this argument.

In determining whether an overruling judicial decision should be limited to prospective application only, this court has stated that "logic and justice" dictate. State v. White, 194 So.2d 601 (Fla. 1967). In White the supreme court followed its earlier ruling in Christopher v. Mungen, 61 Fla. 513, 55 So. 273 (1911) that:

> Where a statute is judicially adjudged to be unconstitutional, it will remain inoperative while the decision is maintained; but, if the decision is subsequently reversed, the statute will be held to be valid from the date it first became effective, even though rights acquired under particular adjudications where the statute was held to be invalid will not be affected by the subsequent decision that the statute is constitutional.

Id. at 604. Accordingly this court decided not to give its decision retroactive application in White.

Retroactive application of Pullum would also impair federal due process rights. The United States Supreme Court decided a substantially similar case involving its different interpretations of a statute of limitations in Chevron Oil Co. v. Huson, 404 U.S. 97 (1971). After a lawsuit was initiated, the Supreme Court held in Rodrigue v. Aetna Casualty & Surety Co., 395 U.S. 352 (1969), that Louisiana's one-year statute of limitation for personal injury actions, La. Civ. Code Ann. art. 3536, rather than the admiralty doctrine of laches governed the case. The lawsuit was timely under the laches doctrine, but barred by the one-year statute of limitations.

The Supreme Court looked at three factors in applying the nonretroactivity doctrine: (1) Whether the decision overrules clear past precedent on which litigants may have relied; (2) whether the purpose and effect of the rule will be furthered or retarded by retroactive application, looking

at the prior history of the rule; and (3) whether an inequity will be imposed by retroactive application of the case. The Court held that Rodrigue the case determining that the one-year statute of limitations was applicable, should not be applied retroactively, stating:

> To abruptly terminate this lawsuit that has proceeded through lengthy, and no doubt, costly discovery stages for a year would surely be inimical to the beneficent purpose of the Congress. It would also produce the most 'substantial inequitable results'.... [N]onretroactive application here simply preserves his right to a day in court.

Id. at 107.

In Logan v. Zimmerman Brush Company, 455 U.S. 422 (1982) the United States Supreme Court held that the due process clause of the 14th Amendment to the U.S. Constitution minimally required that "deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." It further recognized that a cause of action is a species of property protected by the due process clause.

There is an abundance of Florida case law holding that retroactive legislation cannot impair vested rights. For example the sovereign immunity statute was held inapplicable to causes of action accruing prior to its effective date since the statue abrogated plaintiff's right to sue the school board in Meli v. Admiral Insurance Co., 413 So.2d 135 (Fla. 3d DCA 1982). Similarly in State Department of Transportation v. Knowles, 402 So.2d 1155 (Fla. 1981), this court applied a balancing test to determine whether the sovereign immunity statute should be applied retroactively to abrogate the plaintiff's pending lawsuit. The court weighed three factors: the strength of the public interest served by the statute, the extent to which the right affected is abrogated, and the nature of the right affected, and held that the statute should be limited to prospective application only.

The same constitutional dictates which prohibit retroactive legislation also prohibit the judiciary from impairing vested property rights. The United States Court of Appeals held that due process principles apply to retroactive application of a judicial interpretation of an old administrative regulation just as well as they apply to retroactive effect of a new regulation:

> The present case, of course, is not concerned with a new regulation which is being given retroactive effect, but with the retroactive application of a new interpretation of an old regulation. We cannot dismiss the problem of retroactivity, however, merely because we are dealing with the interpretation of a regulation. Professor Davis has observed: "If interpretative rules were always merely interpretations of law that already exist, they could never be retroactive, for if they fail to

> reflect the true meaning of the law they interpret, they would be invalid for that reason, and if they reflect that meaning they do not make law retroactively. The obvious reality is, of course, that what is done is the name of interpretation often adds to the meaning of what is already interpreted; for instance, the Supreme Court obviously makes law when it overrules its own prior decisions interpreting due process." (Cite.) The considerations which affect whether a new regulation should be given retroactive effect, therefore, are also relevant to determining whether a new interpretation should be applied retroactively. (Cite.)

Cheshire Hospital v. New Hampshire-Vermont Hospitalization Service, Inc., 689 F. 2d 1112 (1st Cir. 1982).

Despite the abundance of authority for limiting Pullum to prospective application, four of the five Florida district courts have declined to do so. Pait v. Ford Motor Co., 500 So.2d 743 (Fla. 5th DCA 1987); Cassidy v. Firestone Tire & Rubber Co., 495 So.2d 801 (Fla. 1st DCA 1986); Small v. Niagra Machine & Tool Works, ___ So.2d ___, 12 FLW 366 (2nd DCA Jan. 20, 1987); Shaw v. General Motors Corp., ___ So.2d ___, 12 FLW 479 (3d DCA February 10, 1987). Of the four districts, however, only one court addressed the issue of the Plaintiff's vested property rights, and it erroneously concluded that "it does not appear that any property or contract rights were acquired by the Plaintiff here such as would make an exception to the rule." Pait, 500 So.2d at 744. This simply is not the law. Both Florida and federal cases cited previously recognize that upon injury, there vests in the injured person the right of redress under the existing laws.

The error lies in the failure of the courts to distinguish between a mere expectation and a vested property right. One may presently have an expectation that if they are injured in an automobile accident due to the negligence of another, the responsible person will be liable for their damages. This, as every area of tort law, is subject to change by the legislature or judiciary. One's expectation of what the law may be in the future is not a protected property right, until it vests at the moment one is injured. As the Massachusetts Supreme Court stated in Pinnick v. Cleary, 360 Mass. 1, 271 N.E.2d 592 (1971):

> In arguing that the cause of action affected by [the new no-fault insurance statute] constitutes a vested property right, the plaintiff seems to ignore the distinction between a cause of action which has accrued and the expectation which every citizen has if a legal wrong should occur to find redress according to the rules of satutory and common law applicable at that time. The Legislature is admittedly restricted in the extent to which it can retroactively affect common law rights of redress which have already accrued.

Id. at 10-11, 271 N.E.2d at 599.

A property right vested in William Brackenridge on the day his arm was mutilated by the Defendants' unguarded laundry extractor. This property right was the right to a day in court to pursue damages against the manufacturer and distributor of this product for the loss of his arm. This court clearly recognized in Strickland that "a right to compensation having accrued, at least potentially, by the happening of the injury, ... such valuable potential property or contract right to compensation should not be cut off by subsequent overruling court decision given retrospective operation." 18 So.2d at 254.

At least five courts have determined that Pullum cannot be applied retroactively to causes of action pending before Pullum was decided. George v. Firestone, Case No. GCA 85-0117-MMP (N.D. Fla. June 13, 1986); Cox v. Farrel-Birmingham Co., Case No. PCA 86-4064 WEA (N.D.Fla. 1986); Dease v. Jeep Corp., Case No. CI 85-460 CIV-ORL (M.D. Fla. 1986); Felder v. Heim Corp., Case No. 85-5487-CO (Broward County, Judge Price, Dec. 23, 1985); Owens v. Firestone, Case No. 84-350-CIV-T-10 (M.D. Fla. Jan. 28, 1986); Harp v. Safe-Lad, Case No. 83-10545-CA (Duval County, Judge Soud, March 10, 1986). In George, the court recognized that "Plaintiff has indeed acquired a property right which would be destroyed by retrospective operation of Pullum," and in Cox the court stated that "a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause" and "under case law the retroactivity of Pullum could not eliminate that cause of action."

In addition to Brackenridge's basic due process rights which would be violated by retrospective operation of Pullum, basic tenets of "fairness and equity" compel its prospective only application. Although the first district failed to find a "substantial inequity or unfairness which would result upon application of the Pullum ruling", in Cassidy v. Firestone Tire & Rubber Co., 495 So.2d 801 (Fla. 1st DCA 1986), two of the other district courts and at least one federal district

court which ruled against the plaintiffs disagree. In Small v. Niagara Machine & Tool Works, 12 FLW 366 (2nd DCA Jan. 20, 1987), the second district stated "Although our decision may seem unfair or inequitable, we believe it adheres to basic tenets of stare decisis and the separation of powers doctrine. Bearing this in mind, we suggest that the Small's assertions of inequity would more properly be lodged against our legislature."

In Blanco v. Wasco Products, No.85-964 Civ-Marcus (S.D. Fla. March 18, 1986), the federal district court "reluctantly" entered summary judgment for the defendant and stated that, "Abridging Plaintiff's redress for his injuries is a harsh corollary of the Statute of Repose and the Pullum decision."

There are a multitude of cases that were in various stages of litigation when Pullum was decided which have now been thrown out of court regardless of the severity of the plaintiff's injury, the amount of time and money invested in the plaintiff's case, or the posture of the litigation, be it the eve of trial or an advanced stage of settlement negotiation. The statute of repose had not been enacted when the defendants manufactured and distributed the defective product, it was null and void pursuant to Battilla at the time Brackenridge was injured and filed suit, and was repealed while his appeal was pending. To deny him his day in court because he "fell between the cracks" violates his constitutional right to due process and is unjust. This court can easily cure this inequity by limiting Pullum to prospective only application.

III.

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

Soon after Pullum was decided, the Florida Legislature repealed the product liability statute of repose and in effect repealed Pullum. Ch. 86-272, Laws of Florida (1986). The abolition of the statute of repose not only affects the question of whether Pullum should operate retrospectively but it also raises the additional issue of whether the legislative repeal should operate retrospectively to an accrued cause of action.

Although usually statutes are construed to operate prospectively, repealing acts and remedial statutes are not within the general rule but are generally held to operate prospectively. 49 Fla. Jur. 2d Statutes, Sections 106-108, 210; 82 CJS Statutes, Sections 421, 434. "The repealed statute, in regard to its operative effect, is considered as if it had never existed. 49 Fla. Jur 2d Statutes Sec. 209.

Furthermore, the repealing act states in Section 3 that it is to take effect on July 1, 1986. It is not limited to causes of action which accrue after its effective date, unlike another provision of the statute. Section 2 of the statute reduces the statute of limitations for libel and slander actions from four years to two years and Section 3 of the statute provides that the new libel and slander limita-

tion "shall take effect October 1, 1986, and shall apply to causes of action accruing after that date." The section which deletes the product liability statute of repose, however, "shall take effect July 1, 1986." There is no language limiting the product liability deletion to "causes of action accruing after that date" as there is with the libel and slander amendment.

Also important in determining the retroactivity of the statute is the history behind the law. "In ascertaining the legislative intent, the Courts will consider the history of the act, the evil to be corrected, the purpose of the enactment, and the law then in existence bearing on the same subject." State Board of Accountancy v. Webb, 51 So.2d 296 (Fla. 1951). The statute of repose was enacted in 1975. It was declared unconstitutional by the Florida Supreme Court in Battilla v. Allis Chalmers Manufacturing Co. in 1980. 392 So.2d 874 (Fla. 1980). Battilla rendered the product liability statute of repose unconstitutional and inoperative from the time of its enactment, not merely from the time of the decision. "If a legislative enactment conflicts with an existing provision of the Constitution, such enactment never becomes a law." 10 Fla.Jur. 2d, Constitutional Law, Section 91.

Thus, until the Florida Supreme Court's decision in Pullum, there was no effective product liability statute of repose. Even after Pullum, Brackenridge's rights had been settled by the law in effect when his cause of action accrued, namely, Battilla.

> While a statute judicially adjudged to be unconstitutional remains inoperative while the decision is maintained, if the decision is subsequently reversed, the statute will be held valid from the date it first became effective, but rights acquired under the particular adjudication holding the statute invalid are not affected by the subsequent decision that the statute is constitutional.

10 Fla.Jur. 2d Constitutional law Section 93.

Judge Ferguson, of the third district, stated in a specially concurring opinion in Dominguez v. Bucyrus-Erie Co, So.2d ___, 12 FLW 546 (3d DCA Feb.11, 1987):

> Affirmance is required by Shaw; otherwise I would dissent. The reason for giving the revised section 95.031(2), Florida Statutes (Supp. 1986), retrospective application is most compelling.
>
> The Florida Constitution, article I, section 21, provides that "[t]he courts shall be open to every person for redress of any injury." This provision was adopted to give constitutional vitality ot the maxim that for every wrong there is a remedy. Holland ex rel. Williams v. Mayes, 155 Fla. 129, 19 So.2d 709 (1944).
>
> Pullum v. Cincinnati, Inc., 476 So.2d 657 (Fla. 1985), effectively shut the courthouse door on a cause of action in certain product liability cases even before the cause of action accrued, leaving a person injured by another private person without a remedy. The 1986 revision to section 95.031(2) was a prompt legislative overruling of Pullum.
>
> We are not paralyzed, by policy or precedent, from giving the corrective legislation retrospective application to a case which was sandwiched between Battilla and Pullman [sic], so that substantial justice and right shall prevail as contemplated by the constitution. Our duty as an appellate court in construing a statute is first to reconcile it with constitutional mandates. See Biggs v. Smith, 134 Fla. 569, 184 So. 106 (1938) ("The duty is on this Court to see that substantial justice and right shall prevail.").

The legislature acted at its first opportunity to repeal the statute of repose, no doubt intending to remedy the effect of Pullum. The legislative history of the statute of repose, the fact that the statute is a repealing and remedial act, and the fact that the legislature did not limit it to causes of actions accruing after the effective date unlike another provision of the statute, are compelling arguments for applying the statue retroactively. There is certainly a basis for retrospective application, and most importantly, "The duty is on this Court to see that substantial justice and right shall prevail." Biggs v. Smith, 134 Fla. 569, 184 So. 106 (1938).

CONCLUSION

On the day that the laundry extractor which injured Brackenridge was manufactured and delivered, there was no product liability statute of repose. In fact it was not enacted until eight years later. On the day that William Brackenridge's arm was amputated by the laundry extractor there was no product liability statute of repose, as the statute had been declared unconstitutional by the state's highest court four years prior to Brackenridge's injury. And two years after William Brackenridge's injury, when he filed this lawsuit, there was no product liability statute of repose, as Battilla was still the last interpretation of the statute by the supreme court. And, today, more than four years after Brackenridge filed his lawsuit, there is again no product liability statute of repose. Yet, Brackenridge has been barred from pursuing his lawsuit because of the short-lived decision in Pullum. This court can and should correct this injustice by applying the remedial legislative repeal retroactively or by limiting Pullum to prospective application only. Constitutional Due Process, fairness and equity compel this result.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 23rd day of March, 1987 to LAW OFFICES OF JAMES NELSON, Attorneys for Baring, One Biscayne Tower, Suite 2628, Two South Biscayne Boulevard, Miami, Florida; STROOCK & STROOCK & LAVAN, Attorneys for Ametek, 3300 Southeast Financial Center, Miami, Florida; and STEVEN R. BERGER, P.A., Suite B-5 8525 S. W. 92nd Street,Miami, Florida 33156.

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