

4-12

70,225

SUPREME COURT OF FLORIDA  
DISTRICT COURT CASE NO. 86-249  
SUPREME COURT CASE NO.

JOSE LUIS MELENDEZ,  
Petitioner,  
vs.

DREIS & KRUMP MANUFACTURING COMPANY,  
Respondent.

**FILED**  
SID J. WHITE  
MAR 23 1987  
CLERK SUPREME COURT  
By Deputy Clerk

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PETITION FOR REVIEW OF DECISION OF THE DISTRICT COURT  
OF APPEAL OF FLORIDA, THIRD DISTRICT

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BRIEF OF PETITIONER,  
JOSE LUIS MELENDEZ,

KEITH A. TRUPPMAN, ESQ.  
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PETITIONER'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE

This was a products liability action for damages filed in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. The Plaintiff/Petitioner herein sought damages for personal injuries arising from the use of a press-brake machine. The Trial Court entered Final Summary Judgment against the Plaintiff/Petitioner based upon Florida Statute §95.031(2) and Pullum v. Cincinnati, Inc., 476 So.2d 467 (Fla. 1985). The Petitioner appealed the lower Court decision to the District Court of Appeal of Florida, Third District. The District Court affirmed the lower Court decision, however in doing so, certified to the Supreme Court of Florida the following questions as being of great public importance:

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 Batilla 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?

The opinion of the District Court of Appeal of Florida, Third District, is attached hereto and marked Petitioner's Exhibit 1.

#### SUMMARY OF ARGUMENT

The Supreme Court of Florida has jurisdiction to review the decision rendered by the District Court as said decision passes on a question of great public importance.

#### ARGUMENT

The Supreme Court of Florida has jurisdiction to review the decision rendered by the Third District Court of Appeal. Article V, §3(b)(4), Fla. Const., provides that the Supreme Court may review any decision of a District Court of Appeal that passes upon a question certified by it to be of great public importance. Further the Florida Rules of Appellate Procedure, Rule 9.030 (a)(2)(A)(v) provides:

The discretionary jurisdiction of the Supreme Court may be sought to review:

- (A) decisions of district court of appeal that:
- (v) pass upon a question certified to be of great public importance.


The Third District Court of Appeal has certified that its decision passed upon questions to be of great public importance. The jurisdiction of the Supreme Court of Florida attaches by reason of this certification, and as such, this Court has authority to entertain the case and seek review of the entire decision. Zirin v. Charles Pfizer & Co. 128 So.2d 594 (Fla 1961); Gilliam v. Stewart, 291 So.2d.593 (Fla. 1974); Bell v. State, 394 So.2d 979 (Fla. 1981).

CONCLUSION

Based upon the foregoing authorities, the Petitioner respectfully requests this Court accept jurisdiction to review the decision of the District Court.

Respectfully submitted,

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(305) 893-5506

By:   
KEITH A. TRUPPMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petition for Review was mailed to R. FRED

LEWIS, ESQ., Attorney for Respondent, Suite 200, 7211 S.W.  
62nd Avenue, Miami, Florida 33143, this 18th day of March,  
1987.



KEITH A. TRUPPMAN