IN THE SUPREME COURT OF THE STATE OF FLORIDA

JAMES A. MATHIS, et ux,

Appellants,

v.

FOOTE STEEL CORPORATION, et al.,

Appellees.

DOCKET NO.: 70,255

PETITION TO INVOKE DISCRETIONARY JURISDICTION TO REVIEW A DECISION OF THE FIFTH DISTRICT COURT OF APPEAL

BRIEF ON BEHALF OF APPELLANTS,

JAMES A. MATHIS, ET UX

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STATEMENT OF CASE AND FACTS

On August 17, 1987, the Appellant, JAMES A. MATHIS, was seriously injured when the boom of a crane manufactured by the Defendant collapsed and fell on him. On August 13, 1981, a claim for damages was brought against the Defendant manufacturer under several theories of liability, including negligence, implied warranty, and strict liability.

It was uncontroverted that the crane and its boom were manufactured and sold by the Defendants in 1959. The Defendant manufacturer moved for summary judgment on the basis that such an action was barred by Florida Statute 95.031(a) as construed by the recent decision of Pullum v. Cincinnati, Inc., 476 So.2d 657 (Fla. 1985), and an order was entered granting such a motion.

The Plaintiffs timely filed a Notice of Appeal on March 25, 1986, and after hearing oral arguments of counsel, the District Court of Appeals affirmed, per curium, the summary judgment citing the recent decision Pait v. Ford Motor Company, 12 FLW 277 (Fla. 5th DCA 1/15/87). In Pait (supra) the Fifth District Court of Appeal certified the following questions to the Florida Supreme Court as being matters of great public importance:

I

WHETHER THE LEGISLATIVE AMENDMENT OF SECTION 95.031(2), FLORIDA STATUTES (1985), ABOLISHING THE STATUTE OF REPOSE IN PRODUCT LIABILITY ACTIONS, SHOULD BE CONSTRUED TO OPERATE RETROSPECTIVELY TO A CAUSE OF ACTION WHICH ACCRUED BEFORE THE EFFECTIVE DATE OF THE AMENDMENT?

II

IF NOT, WHETHER THE DECISION OF PULLAM V. CINCINNATI, INC. 476 So.2d 657 (FLA. 1985) WHICH OVERRULED BATTILLA V. ALLIS CHALMERS MANUFACTURING COMPANY, 392 So.2d 874 (FLA. 1980) APPLIES SO AS TO BAR A CAUSE OF ACTION FOR WRONGFUL DEATH THAT ACCRUED AFTER THE BATTILLA DECISION BUT BEFORE THE PULLAM DECISION?

Plaintiff, JAMES A. MATHIS, timely filed a Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court on March 18, 1987, pursuant to Rule 9.030(a)(2)(A)(V).

SUMMARY OF ARGUMENT

The Florida Supreme Court should invoke its discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(V) in the instant case as it concerns an identical question previously certified as a question of great public importance.

The Appellant, JAMES A. MATHIS, would be unduly prejudiced if the Order of the District Court of Appeal granting summary judgment became final before the Pait v. Ford Motor Company, 12 FLW (Fla. 5th DCA 1/15/87) decision is reviewed by this Court.

ARGUMENT ON POINT ON APPEAL

POINT 1

WHETHER THE FLORIDA SUPREME COURT HAS DISCRETIONARY JURISDICTION TO REVIEW A DECISION OF THE DISTRICT COURT OF APPEALS WHICH INVOLVES A QUESTION BEFORE THE SUPREME COURT CERTIFIED TO BE OF GREAT PUBLIC IMPORTANCE.

Rule 9.30(a)(2)(A)(V), Florida Rules of Appellate Procedure, provides that the discretionary jurisdiction of the Supreme Court may be sought to review decisions of district courts of appeal that pass upon a question certified to be of great public importance.

The per curium decision of the District Court of Appeal in the case at bar is expressly based upon the authority of Pait v. Ford Motor Company, 12 FLW (Fla. 5th DCA 1/15/87), which concerns the identical issue of the retroactive application of legislative decisions affecting the statutory limitations period concerning manufactured products. The question presented in Pait (supra) has been certified to the Florida Supreme Court as passing upon a question of great public importance.

It should be noted that the decisions cited by the Fifth District Court of Appeal were decided long after the Appellate Briefs had been filed by both parties and just two to three weeks prior to oral argument in the instant case.

Appellants, JAMES A. MATHIS, et ux, would be unduly prejudiced if the Order of the Fifth District Court of Appeal barring their claim became final before the Pait decision is

reviewed by this Court. The issue at hand has been certified by the Appellate Court as being a question of great public importance, and the petitioners should be given the benefit of the Florida Supreme Court's decision under the circumstances.

CONCLUSION

It is clear that the Florida Supreme Court should invoke its discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(V) in the instant case as it concerns an identical question previously certified as a question of great public importance.

The Appellant, JAMES A. MATHIS, would be unduly prejudiced if the Order of the District Court of Appeal granting summary judgment became final before the Pait v. Ford Motor Company, 12 FLW (Fla. 5th DCA 1/15/87) decision is reviewed by this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to Michael A. Miller and Melvin B. Wright of Walker, Miller and Ketcham, P.A., Post Office Box 273, Orlando, Florida 32802, this 9th day of April 1987.

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