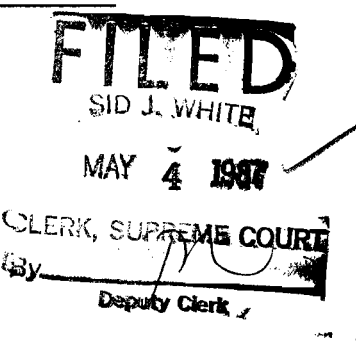
IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,344



WILLIAM SHAW, individually and as guardian and next friend of GREGORY SHAW and SCOTT SHAW and CHRISTEL SHAW, his wife,

Appellants,

vs.

GENERAL MOTORS CORPORATION AND FEDERATED DEPARTMENT STORES, INC.,

Appellees.
_____/

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

MAIN BRIEF OF PETITIONERS, WILLIAM SHAW, et al.

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of GREGORY SHAW and SCOTT SHAW
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FEDERATED DEPARTMENT STORES, INC,

RESPONDENTS.
_____/

INTRODUCTION

This is a petition for review brought by the Petitioners for determination of two questions certified to be of great public importance. The Respondents are General Motors Corporation and Federated Department Stores, Inc.

STATEMENT OF THE CASE AND FACTS

This case concerns a refrigerator that was delivered to the original purchaser on or about January 1970. The refrigerator was manufactured by Defendant General Motors Corporation, and sold to the original purchaser by Defendant Federated Department Stores, Inc.

On April 28, 1983, the refrigerator caught fire, causing injury to the Plaintiffs. On October 16, 1984, Plaintiffs filed a lawsuit naming General Motors Corporation as a Defendant, and on

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November 6, 1985 filed a Second Amended Complaint naming Federated Department Stores, Inc. as an additional Defendant. Thus, the lawsuit was filed more than twelve years after the date of delivery of the product to its original purchaser.

On August 29, 1985, the Florida Supreme Court in Pullum v. Cincinnati, Inc., 476 So. 2nd 657 (Fla. 1985) ruled that the statute of repse on products liability cases was constitutional. Both Defendants filed a Motion for Judgment on the Pleadings, based on the statute of repose. The twelve year period, as measured from the date of delivery to the original purchaser, expired in January 1982, over one year before the refrigerator caught on fire. Thus, if Pullum is to be applied, Petitioners will have been barred from their cause of action before it accrued.

The trial court granted the Motions for Judgment on the Pleadings, and the Third District Court of Appeals affirmed. The Court certified, as did the Fifth District, the two questions set forth verbatim under "Issues on Appeal."

ISSUES ON APPEAL

I. WHETHER 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.

II. IF NOT, WHETHER 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 BATTILA v. ALLIS CHALMERS MFG. CO., 392 SO.2D 874 (FLA. 1980), APPLIES SO AS TO BAR A CAUSE OF ACTION THAT ACCRUED AFTER THE BATTILA DECISION BUT BEFORE THE PULLUM DECISION.

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SUMMARY OF ARGUMENT/ARGUMENT

The identical issues have been well briefed for this Court in Sharon Pait v. Ford Motor Co., Case No. 69,917. The Court is requested to review the Main Brief of Petitioner Sharon Pait, and the Brief of Amicus Curiae, The Academy of Florida Trial Lawyers, both dated February 23, 1987. The arguments in these Briefs are hereby incorporated by reference.

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 should be answered in the negative as well.

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By: _____
FRED E. GLICKMAN, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the following: Wendy F. Lumisch, Esq., Rumberger, Weschler & Kirk, P.A., One Biscayne Tower, Suite 3410, 2 South Biscayne Blvd., Miami, Florida 33131; David L. Sullivan, Esq., Usich & Sullivan, Suite 905, 9100 S. Dadeland Blvd., Miami, Florida 33156; Edward O'Donnell, Esq., Mershon, Sawyer, et al, 200 S. Biscayne

4th per letter received dated 5-7-87

Blvd., Suite 4500, Miami, Florida 33137 on this 1st day of May, 1987.

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