

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

**Richard Pullum v. Cincinnati, Incorporated, the Cincinnati Shaper Company, Sti-Gro First Corp., Formerly Known As Harry P. Leu Machinery Corporation, a Dissolved Florida Corporation, Robert H. Stine, Eugenie E. Stine and Robert E. Groth, As Directors and/or Trustees of Sti-Gro First Corp.**

458 So. 2d 1136 (Fla. Dist. Ct. App. 1984) · No. AU-62 · Decided September 26, 1984

SUMMARY

The Florida First District Court of Appeal affirmed summary judgment barring Richard Pullum's product-liability claims under Florida's twelve-year statute of repose. The court held that applying the statute did not violate equal protection or the constitutional right of access to courts because Pullum still had approximately one and one-half years after his injury to file suit. On rehearing, the court certified a question of great public importance concerning equal protection for persons injured by products delivered eight to twelve years before the injury.

CASE DETAILS

|                       |                                                                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of Florida, First District                                                                                                                                                                                    |
| WRITING FOR THE COURT | Per curiam; Mills, J.; Smith, J.; Nimmons, J.                                                                                                                                                                                          |
| JURISDICTION          | Florida                                                                                                                                                                                                                                |
| DECIDED               | September 26, 1984                                                                                                                                                                                                                     |
| DOCKET                | AU-62                                                                                                                                                                                                                                  |
| DISPOSITION           | affirmed                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Appeal from a summary judgment entered for the defendants in a products-liability action. The First District Court of Appeal affirmed and, on rehearing, certified a question of great public importance to the Florida Supreme Court. |
| STANDARD OF REVIEW    | De novo review of summary judgment and the constitutional validity and application of the statute of repose.                                                                                                                           |
| PRECEDENTIAL VALUE    | Published appellate opinion; certified question of great public importance                                                                                                                                                             |
|                       |                                                                                                                                                                                                                                        |

## PARTIES

Richard Pullum v. Cincinnati, Incorporated, the Cincinnati Shaper Company, Sti-Gro First Corp., formerly known as Harry P. Leu Machinery Corporation, a dissolved Florida corporation, Robert H. Stine, Eugenie E. Stine, Robert E. Groth, as directors and/or trustees of Sti-Gro First Corp.

## TOPICS

products liability   strict liability   equal protection   statutory interpretation   appellate procedure

## PRACTICE AREAS

products liability   constitutional law   appellate procedure   statutory interpretation

## QUESTIONS PRESENTED

1. Whether application of section 95.031(2), Florida Statutes, to bar Pullum's products-liability action violated the Florida Constitution's guarantee of access to courts.
2. Whether applying the statute of repose to persons injured between eight and twelve years after product delivery denied equal protection of the laws.
3. Whether summary judgment was proper because Pullum's action was filed more than twelve years after delivery of the product to its original purchaser.

## HOLDINGS

1. Application of section 95.031(2) did not unconstitutionally deny Pullum access to the courts because approximately one and one-half years remained after his injury before expiration of the twelve-year repose period.
2. Section 95.031(2) did not deny equal protection of the laws merely because persons injured between eight and twelve years after delivery could have less than four years to sue, while persons injured twelve or more years after delivery could receive four years under Overland.
3. Summary judgment for the defendants was proper because Pullum filed his products-liability action outside the twelve-year period established by section 95.031(2).

## KEY QUOTATIONS

*“This does not amount to a proscribed limitation of access to courts under Article I, Section 21, of the Florida Constitution.”* (458 So. 2d at 1138)

*“As previously noted, this argument is unavailing to Pullum inasmuch as one and one-half years still remained after the accident before the twelve-year period expired.”* (458 So. 2d at 1140)

## FACTUAL BACKGROUND

On April 29, 1977, Richard Pullum was injured while operating a Cincinnati pressbrake machine. The machine had been delivered to its original purchaser on November 11, 1966. Pullum filed suit on November 26, 1980,

alleging negligence, implied warranty, and strict liability; the filing was within the ordinary four-year limitations period but outside the twelve-year product-liability statute of repose.

#### PROCEDURAL HISTORY

Pullum was injured while operating a Cincinnati pressbrake machine on April 29, 1977, and filed suit on November 26, 1980, asserting negligence, implied warranty, and strict liability. The trial court entered summary judgment because the action was filed more than twelve years after delivery of the product to its original purchaser, as provided by section 95.031(2), Florida Statutes. The appellate court affirmed, denied rehearing, and certified whether the statute denied equal protection to persons injured by products delivered between eight and twelve years before the injury.

#### DISPOSITION

affirmed

#### CASES CITED

- Cates v. Graham, 451 So. 2d 475 (Fla. 1984)
- Purk v. Federal Press Co., 387 So. 2d 354 (Fla. 1980)
- Bauld v. J.A. Jones Construction Co., 357 So. 2d 401 (Fla. 1978)
- Overland Construction Co., Inc. v. Simons, 369 So. 2d 572 (Fla. 1979)
- Universal Engineering Corp. v. Perez, 451 So. 2d 463 (Fla. 1982)
- Diamond v. Squibb and Sons, 397 So. 2d 671 (Fla. 1981)
- Battilla v. Allis Chalmers Manufacturing Co., 392 So. 2d 874 (Fla. 1981)
- Cobb v. Maldonado, 451 So. 2d 482 (Fla. 4th DCA 1984)