

Design Accountability

Statutes of repose, the missing inspector, and a knowledge gate for the people who design things

A hazard engineered to fail slowly, hidden where no user can inspect it, will outlast the repose window. The designer who conceals best is the designer the statute protects most completely.

THE LOAD TEST

Every legal rule is a designed structure, and designed structures can be load tested. This one does not merely fail to deter the concealed hazard. It pays for it.

VARIABLE ONE

What the designer knew at the moment of the decision

VARIABLE TWO

Whether the people bearing the consequences could ever find out

The claim: liability doctrine should turn on the first variable, time based shields presently turn on neither, and the combination of a time based shield with an unwatched product category creates a payoff structure that rewards the most patient concealer.

II

The Specimen

A void beneath the garage

In the summer of 2026, a contractor's sledgehammer went through a garage slab into a room no occupant knew existed.

NORTH HUNTINGDON, PENNSYLVANIA, SUMMER 2026

One unprotected steel column, corroding for thirty years in a sealed cavity, carrying the floor a family parked on.

The discovery

A contractor hired to repair cracks in the garage floor put his sledgehammer through the slab into a room no occupant knew existed: a void beneath the garage, inaccessible from the finished basement, weatherproofed on a single wall.

The three verdicts

A structural engineer retained by the family attributed the condition to poor workmanship and faulty construction. The builder's representative offered a different frame: the laws were different thirty years ago. The homeowner's insurer denied coverage, because faulty construction is excluded.

The sibling

A second home by the same builder, same era, one township over, had already failed the same way. Its owner's car broke through the garage floor, revealing a void nine feet deep whose existence, she discovered, was drawn on the blueprints filed with her township.

No lawsuit will reach this builder, and the article does not argue otherwise. Pennsylvania's statute of repose extinguishes construction claims twelve years after completion, and expiration does not merely bar the remedy. It abolishes the cause of action.

THE EXPERT, AND THE CALENDAR

Workmanship and construction describe how a thing was built. They are never descriptions of when.

THE ONE EVALUATOR WITH NO STAKE

The insurer guarded its reserves and invoked the exclusion. The builder guarded its name and invoked the calendar. The structural engineer, with neither a premium to guard nor a warranty to escape, had an entire lexicon of temporal excuse available — standards of the era, ordinary deterioration, service life exceeded — and used none of it. He located the failure in the act of building.

THE KERNEL, AND WHY IT FAILS

Pennsylvania had no statewide building code until 2004, and a mid-1990s home answered only to its municipality's ordinance. But codes were never the only source of obligation: the implied warranty of workmanlike construction predates any statewide code by decades, and negligence law asked then what it asks now. Both were available to a plaintiff at year two. The calendar defense relocates the dispute from method, where the builder loses, to time, where the builder wins — and the relocation concedes the method question.

SOURCES Schiller (July 2026); Act of Nov. 10, 1999, P.L. 491, No. 45; 34 Pa. Code ch. 403; *Elderkin v. Gaster*, 447 Pa. 118, 288 A.2d 771 (1972); *Tjys v. Resta*, 476 A.2d 427 (Pa. 1984); *Conway v. Cutler Group, Inc.*, 99 A.3d 67 (Pa. 2014); *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916).

CHOICE, NOT CHANCE

Nothing departed from intent. The intent is the problem.

Unprotected steel, wet cavity

The most elementary corrosion scenario in the building trades — knowledge a builder cannot avoid possessing.

A manufacturing defect is confined to the unlucky unit. A design defect replicates across every unit built from the plan. The second home's identical failure — same era, same builder, same buried void, same broken slab — is what replication looks like.

A single column

By construction, a single point of failure.

A sealed cavity

Guaranteed that the one party with a continuing interest in the column's condition — the occupant — could never observe it, maintain it, or discover its decay.

The concealment is not incidental to the story. It is the load bearing element of the legal outcome: the concealment is what converted a claim that existed at year two into a claim that had been abolished by year thirty.

SOURCES Restatement (Third) of Torts: Products Liability § 2 (Am. L. Inst. 1998); *Greenman v. Yuba Power Products, Inc.*, 59 Cal. 2d 57, 377 P.2d 897 (1963); *Barker v. Lull Engineering Co.*, 20 Cal. 3d 413, 573 P.2d 443 (1978); *Escola v. Coca Cola Bottling Co.*, 24 Cal. 2d 453, 150 P.2d 436 (1944) (Traynor, J., concurring).

III

The Clock

What repose actually protects

The identical concealment that estops a limitations defense perfects a repose defense.

TWO CLOCKS, TWO NATURES

Twelve years after completion, the claim is not barred. It is abolished.

STATUTE OF LIMITATIONS

Runs from accrual of the claim. Subject to equitable tolling. Asks when the plaintiff knew or should have known.

STATUTE OF REPOSE

Runs from the defendant's last act. Measured without reference to injury or discovery. In Pennsylvania: twelve years from completion of construction, extended to fourteen where injury falls in years ten through twelve, and expiration completely abolishes and eliminates the cause of action.

ROBUST AGAINST CIRCUMVENTION

A builder's return to perform repairs does not restart the period. And “lawfully” performing construction requires authorization and licensure rather than code compliance, so a certificate of occupancy starts a clock that code violations cannot stop.

The provision is one instance of a national pattern: in the products liability reform era, most states enacted repose or useful life statutes for improvements to realty, products, or both.

SOURCES 42 Pa. Cons. Stat. § 5536(a)-(b); *CTS Corp. v. Waldburger*, 573 U.S. 1 (2014); *Cal. Pub. Employees' Ret. Sys. v. ANZ Sec., Inc.*, 582 U.S. 497 (2017); *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991); *Noll*, 643 A.2d 81; *Freezer Storage, Inc. v. Armstrong Cork Co.*, 382 A.2d 715 (Pa. 1978); *Venema v. Moser Builders, Inc.*, 2022 PA Super 171, 284 A.3d 1224; *Johnson v. Toll Bros.*, 2023 Pa. Super. LEXIS 410; Robert A. van Kirk, Note, 1989 Duke L.J. 1689.

THE FINALITY RATIONALES

Lost records, faded memories, and unfair surprise are equities that belong to a defendant who did not cause the silence.

Fairness

A defendant is entitled to a sense of security after a reasonable time.

Stale evidence

Records are lost and memories fade, so old claims try badly.

Certainty

Business planning and insurability require a bounded rather than perpetual liability tail.

Every rationale shares one assumption: that the evidentiary silence of the intervening years is a natural product of time. The scholarship on latent injury has shown that time bars perform worst exactly where the gap between wrongful act and discoverable harm is longest — toxic exposure is the canonical case, and repose has extinguished products claims before injury, an effect one commentator called death before conception.

The present argument is narrower, and for that reason harder to resist: it does not ask what to do about all latency. Only about latency the defendant built.

SOURCES Christopher R. Leslie, Comment, 81 Cal. L. Rev. 1587 (1993); Note, 81 Mich. L. Rev. 399 (1982); Developments in the Law, 63 Harv. L. Rev. 1177 (1950); *Lewis v. Marshall*, 30 U.S. (5 Pet.) 470, 476-77 (1831); Michael D. Green, 76 Cal. L. Rev. 965 (1988); van Kirk, 1989 Duke L.J. 1689 (citing Kratky, 37 Sw. L.J. 665).

THE SEAM

Concealment estops limitations. Concealment perfects repose.

IN LIMITATIONS LAW

A defendant whose affirmative concealment prevented the plaintiff from discovering the claim is estopped from pleading the time bar his concealment produced. The Supreme Court traced the rule to nineteenth century equity and declared it read into every federal statute of limitation. The whole family of doctrines rests on the oldest maxim in the neighborhood: no one may take advantage of his own wrong.

IN REPOSE LAW

No such exception, as a general rule. Because repose abolishes the right rather than delaying the remedy, the Supreme Court has expressly held that equitable tolling cannot touch it.

A defendant who hides his wrong for four years wins only if the hiding fails. A defendant who hides his wrong for thirteen years wins automatically – and wins more securely the better the hiding worked.

SOURCES *Holmberg v. Armbrrecht*, 327 U.S. 392 (1946); *Bailey v. Glover*, 88 U.S. (21 Wall.) 342 (1874); *United States v. Kubrick*, 444 U.S. 111 (1979); *TRW Inc. v. Andrews*, 534 U.S. 19 (2001); *Gabelli v. SEC*, 568 U.S. 442 (2013); *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231 (1959); *ANZ Sec.*, 582 U.S. 497; *CTS Corp.*, 573 U.S. 1.

THE SPLIT

The dissenting jurisdictions are the proof that the reform is administrable rather than utopian.

KANSAS · TOLLING

“There is no reason grounded in logic to presume that the fraudulent concealment of a defendant will toll a statute of limitations but not a statute of repose.”

The other side. The Seventh Circuit, applying Indiana law, holds that repose statutes “absent express language to the contrary” vest a substantive immunity that supersedes equitable tolling — and the qualifier is the reform’s opening, since express language is exactly what a legislature can supply. Missouri agrees; Pennsylvania’s abolition language commits it to the same side.

GEORGIA AND MISSISSIPPI · ESTOPPEL

The repose period never moves, but a defendant whose fraud concealed the injury’s cause is estopped from raising the defense his own wrong created. “Equity mandates that wrongdoers should be estopped from enjoying the fruits of their fraud.”

MINNESOTA · STATUTE

Its construction repose provision opens “Except where fraud is involved,” and was applied to allow suit against a manufacturer alleged to have concealed asbestos hazards long past the repose date. The opening four words are the entire reform.

The constitutional undercurrent. Utah, Rhode Island, Mississippi, and Illinois courts have struck construction or products repose statutes under open courts and remedies clauses precisely because they extinguish injuries before discovery is possible. Pennsylvania upheld its statute, which is why the fix there must be legislative.

SOURCES *Robinson v. Shah*, 936 P.2d 784 (Kan. Ct. App. 1997); *Esener v. Kinsey*, 240 Ga. App. 21 (1999); *Windham v. LATCO of Miss., Inc.*, No. 2005-CT-02086-SCT (Miss. 2005); Minn. Stat. § 541.051, subd. 1(a); *Appletree Square 1 Ltd. P’ship v. W.R. Grace & Co.*, 815 F. Supp. 1266 (D. Minn. 1993); *Cortez v. Cook Inc.*, No. 20-3434 (7th Cir. Mar. 2, 2022); *Ambers-Phillips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901 (Mo. 2015); *Berry ex rel. Berry v. Beech Aircraft Corp.*, 717 P.2d 670 (Utah 1985); *Horton v. Goldminer’s Daughter*, 785 P.2d 1087 (Utah 1989); *Kennedy v. Cumberland Eng’g Co.*, 471 A.2d 195 (R.I. 1984); *Phipps v. Irby Constr. Co.*, 636 So. 2d 353 (Miss. 1993); *Hayes v. Mercy Hosp. & Med. Ctr.*, 136 Ill. 2d 450 (1990).

THE STRONGEST OBJECTION, STATED AT FULL STRENGTH

“Every wall covers a stud, every slab covers its fill” — so would a concealment exception swallow repose whole?

Covering is not entombing

Ordinary covering is built on reversibility and access: drywall is cut and patched, basements are entered, and the residential code itself requires an access opening to every under floor space. The trade covers what remains checkable and refuses to bury what must someday be checked. The specimen was built to have no path back, ever.

Concealment compounds its contents

A hole that should have been filled was spanned; the span was carried on the one material every member of the trade knows fails in that environment; the entombment buried both prior choices permanently. Knowledge and affirmative acts are satisfied at every layer of the stack. Ordinary covering satisfies them at none.

The wall asserted

A person in that finished basement reasonably understood cold earth behind that wall. The design communicated solid ground while delivering a cavity on a corroding column — a design performing less safely than an ordinary user would expect, which is the consumer expectations prong of defect doctrine in its home vocabulary.

Minnesota's statute has administered this distinction for decades without the exception swallowing anything, which is the empirical answer to the floodgates objection. And the categorical ground of the objection is an argument about what the legislature wrote, not what it should write — it concedes that the fix is legislative.

THE INCENTIVE READING

A twelve year repose window converts durable concealment from a moral failing into a rational engineering specification.

Fails fast

Actionable. Warranty and negligence reach it comfortably inside the window.

Fails slowly, visibly

Actionable. Discovery triggers suit within the period.

Slow and unseen

Fully sheltered. A corrosion mechanism with a multi decade fuse, sealed where no occupant could watch it burn — the two properties the North Huntingdon design achieved.

Liability deters only harms that can be attributed and litigated; where attribution fails, regulation must substitute. What the seam adds is that a defendant can manufacture the attribution failure himself and be rewarded for it with abolition of the claim.

IV

The Pattern

Manufactured silence as a documented strategy

The knowledge nearly always surfaced the same way: through litigation discovery, on the far side of every time bar that applied.

AUTOMOTIVE

The early warning statute is Congress's finding, written into law, that the industry could not be trusted to surface its own death data voluntarily.

The fuel tank

A punitive award sustained on evidence that the manufacturer's own crash testing identified the vulnerability before sale, and that the design proceeded on cost grounds. The punitive theory was conscious disregard of a known danger.

The ignition switch

An internal investigation found engineers knew of the defect for roughly a decade, and that the part was quietly redesigned without a part number change — a step that specifically impeded later traceability. A \$900 million wire fraud resolution was premised on concealment of the defect from the regulator.

The airbag inflator

The largest recall in automotive history featured internal test data at variance with data reported to customers and regulators, resolved by consent order and criminal plea.

The revisionist account of the fuel tank episode contests the popular version while accepting the core of the internal knowledge record. And the objection that juries punish the very conduct of risk analysis does not reach this proposal, which attaches no consequence to analyzing risk and every consequence to concealing a lethal condition the analysis found. The gate punishes the burial, never the audit.

SOURCES *Grimshaw v. Ford Motor Co.*, 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (Ct. App. 1981); Gary T. Schwartz, 43 Rutgers L. Rev. 1013 (1991); W. Kip Viscusi, 52 Stan. L. Rev. 547 (2000); Anton R. Valukas, *Report to Board of Directors of General Motors Company Regarding Ignition Switch Recalls* (May 29, 2014); Deferred Prosecution Agreement, *United States v. General Motors Co.* (S.D.N.Y. Sept. 2015); Consent Order, *In re TK Holdings Inc.* (NHTSA 2015).

TOBACCO AND ASBESTOS

Research organized through counsel, to shield what the documents knew from the people the products reached.

Tobacco

After a nine month bench trial on the internal documents, a federal court found the major manufacturers had for decades publicly denied what they internally knew about addiction and disease, and had organized research through counsel to shield it from discovery.

Asbestos

The Fifth Circuit's foundational failure to warn decision rested on evidence that the hazard was documented in the industrial hygiene literature decades before warnings appeared, and the internal document scholarship has since traced the affirmative suppression apparatus in detail.

Uncertainty as a service

The strategy has matured into an industry: the manufacture of scientific uncertainty as litigation support, offered commercially across product categories.

In the pharmaceutical archive, a scoping review found that nearly all of the 37 studies analyzing internal company documents obtained them through legal proceedings, and concluded that the scandals unveiled are symptoms of systematic strategies rather than exceptions.

SOURCES *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1 (D.D.C. 2006); Stanton A. Glantz et al., *The Cigarette Papers* (1996); Hanauer et al., 274 JAMA 234 (1995); Drope & Chapman, 55 J. Epidemiology & Community Health 588 (2001); *Borel v. Fibreboard Paper Products Corp.*, 493 F.2d 1076 (5th Cir. 1973); Egilman & Bohme, 11 Int'l J. Occup. Env'tl. Health 331 (2005); Bohme, Zorabedian & Egilman, 11 Int'l J. Occup. Env'tl. Health 338 (2005); David Michaels, 1076 Annals N.Y. Acad. Sci. 149 (2006); David Michaels, *Doubt Is Their Product* (2008); Gagnon & Dong, 1 Cochrane Evidence Synthesis & Methods (2023).

AVIATION, AND THE BUILT ENVIRONMENT ITSELF

The pattern reaches certification, cladding, and concrete.

346 DEATHS**The 737 MAX**

The congressional investigation found the manufacturer concealed the character of a new flight control system from regulators and airlines, and secured the removal of references to it from pilot materials. Resolved by deferred prosecution.

72 DEATHS**Grenfell Tower**

The public inquiry found what it called systematic dishonesty by cladding and insulation manufacturers: deliberate manipulation of test data, and marketing of products known to be unsuitable for high rise external walls.

98 DEATHS**Champlain Towers South**

A forty year old building, long term deterioration in concealed and under inspected structural elements, now the subject of a federal construction safety investigation. Closest to the specimen's structural facts – and it moved a legislature, a point Part IV returns to.

Three propositions follow. Design decisions against known risk recur across unrelated industries, which is what one expects when the payoff structure is the cause. The knowledge surfaces through compelled disclosure years later, so concealment and the time bar are complements. And the law already possesses the culpability vocabulary: actual knowledge, willful blindness, conscious disregard. What it lacks is the application of the concept to the one shield that ignores it.

SOURCES H. Comm. on Transp. & Infrastructure, 116th Cong., *Final Committee Report: The Design, Development & Certification of the Boeing 737 MAX* (Sept. 2020); Deferred Prosecution Agreement, *United States v. Boeing Co.*, No. 4:21-cr-005 (N.D. Tex. Jan. 7, 2021); *Grenfell Tower Inquiry: Phase 2 Report* (Sept. 4, 2024); Nat'l Inst. of Standards & Tech., NCST Investigation of the Champlain Towers South Collapse; *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754 (2011); *Grimshaw*, 119 Cal. App. 3d 757.



The Missing Inspector

Five regimes and one omission

The product leaves the maker's hands, and a watcher remains downstream — everywhere except the one product Americans sleep inside.

HARM SURVEILLANCE WHERE IT EXISTS

Five regimes, one shape: the product ships, and a watcher remains downstream, collecting the harm signal with authority to act on it.

Food

Warrantless administrative inspection under the closely regulated industry doctrine. The restaurant traced to a cluster of illness is inspected, corrected, or closed.

Motor vehicles

Every manufacturer must report all incidents involving fatalities or serious injuries alleged to have been caused by a possible defect — notwithstanding any protective order or settlement confidentiality. The regulator holds inspection, records, and subpoena authority for the life of the product.

Drugs and devices

Adverse events flow to the Food and Drug Administration under an analogous architecture.

Consumer products

A statutory duty to immediately inform the Commission of any defect that could create a substantial product hazard, on pain of penalty.

Workplaces

Inspection on complaint and injury under the occupational safety laws.

The doctrine has boundaries the Court has policed — it does not extend to industry generally, and inspection schemes must afford precompliance review — and within them, deaths flow to a regulator as data, patterns open investigations, and investigations produce recalls at year two or year fifteen, because the surveillance never lapses.

SOURCES *New York v. Burger*, 482 U.S. 691 (1987); *United States v. Biswell*, 406 U.S. 311 (1972); *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970); *Camara v. Municipal Court*, 387 U.S. 523 (1967); *See v. City of Seattle*, 387 U.S. 541 (1967); *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978); *City of Los Angeles v. Patel*, 576 U.S. 409 (2015); FDA Food Safety Modernization Act, Pub. L. No. 111-353; 21 U.S.C. § 374; TREAD Act, Pub. L. No. 106-414; 49 U.S.C. § 30166(b), (c), (e), (g), (m)(3)(C)-(D); 49 C.F.R. pt. 579; 21 U.S.C. § 360i; 21 C.F.R. pt. 803; 15 U.S.C. § 2064(b); 29 U.S.C. § 657(a).

THE OMISSION

The regulatory attention paid to a house is intense and momentary. At the certificate of occupancy, it ends, permanently.

No agency collects reports of deaths or serious injuries associated with residential structural failure by builder or by floor plan. No early warning database would have connected the North Huntingdon void to its nine foot sibling one township over. The two families connected themselves, through a television station.

A vehicle with a lethal design flaw is recallable in year fifteen because the reporting duty never expired. A house with a corroding hidden support has no watcher in year fifteen — and the one product Americans sleep inside, park over, and raise children in is the one with no downstream surveillance at all.

THE OMISSION IS A CHOICE, AND THE PROOF IS RECENT

After Surfside, Florida enacted mandatory milestone structural inspections of condominium buildings three stories or more — at thirty years, twenty-five near the coastline, and every ten years thereafter, with reports to the association and the local building official. Its findings state the watcher's premise in statutory prose: maintaining structural integrity "throughout the life of the building" is of paramount importance.

England couples strict builder liability for unfit dwellings with an insurance backed ten year warranty scheme whose warranty body itself inspects. And the economics of building codes reaches the same conclusion: a code prescribing methods at the moment of construction cannot deliver the efficient safety level, because it neither observes what the builder did nor follows the building through time.

Two switches, one mechanism. Repose switches off the remedy at year twelve; absent surveillance switches off the discovery that could have produced a timely claim. A concealed hazard defeats liability only when both are off — and the built environment is the domain where both are off at once.

SOURCES Schiller (July 2026); Fla. Stat. § 553.899 (enacted by S.B. 4-D, signed May 26, 2022); Defective Premises Act 1972 (UK); Carl F. Stychin, 16 Legal Studies 387 (1996); Peter F. Colwell & Abdullah Yavas, *The Value of Building Codes*, 20 Real Est. Econ. 501 (1992).

THE TRIGGER STANDARD

The watcher works. A death signal crosses a tolerance line, scrutiny follows, and the death data vindicates the mandated redesign.

45%

reduction in child mortality from oral prescription drug ingestion after child resistant packaging — roughly 460 children's lives through 1992. The Poison Prevention Packaging Act of 1970 was the first statute of its kind.

348

American drownings a year still preventable by full deployment of pool fencing and life jackets. Four sided isolation fencing remains the one intervention with demonstrated effectiveness against toddler drowning; drain entrapment deaths produced a federal statute.

THE PRINCIPLED TOLERANCE LINE

The benchmark is the organic baseline: the risk of death a person carries from the world itself, without the product in her life. The Nuclear Regulatory Commission's quantitative safety goals are this standard codified, capping the risk a plant may add to its neighbors at 0.1 percent of the background accident risk they already bear.

Two refinements: people tolerate roughly a thousand times more voluntary than imposed risk, and a concealed hazard is the limit case of imposed risk — risk its bearer was structurally prevented from ever pricing. And the baseline must be fixed, the world without the product, or the standard consumes itself.

Even the staircase — the homeliest hazard in the housing stock — has its riser heights, tread depths, handrails, and guards specified by code in response to fall injury data.

SOURCES Poison Prevention Packaging Act of 1970, Pub. L. No. 91-601; Rodgers, 275 JAMA 1661 (1996); Rodgers, 156 Archives Pediatrics & Adolescent Med. 929 (2002); Thompson & Rivara, Cochrane CD001047 (1998); Peterson et al., 32 Injury Prevention 495 (2025); Virginia Graeme Baker Pool and Spa Safety Act, Pub. L. No. 110-140, tit. XIV; Int'l Code Council, IRC § R311.7 (2018); NRC Safety Goals Policy Statement, 51 Fed. Reg. 30,028 (Aug. 21, 1986); Starr, 165 Science 1232 (1969); Wang et al., 45 Int'l J. Energy Rsch. 9694 (2021).

THE DESIGNER'S DILEMMA, AND THE CONSTITUTIONAL DOORWAY

Past the baseline, there are exactly two positions, and neither supports unwatched release.

THE DESIGNER WAS WRONG

Sincerely believed the product safe, about a matter squarely within the designer's charge. The sincerity is no comfort; the belief was incompetent, and the presumption of unwatched release is forfeited on the record. Incapacity calls for the watcher and the mandated redesign.

Journalism is not a system. The North Huntingdon family obtained a cost sharing offer from its builder only after a television investigation aired. The identical builder with the identical void, absent a newsroom, pays nothing. A surveillance system that runs on the contingency of journalism is the absence of one, with occasional weather.

THE DESIGNER KNEW

Knowledge calls for the gate and liability. The deaths are identical in both branches, and there is no third branch in which the deaths are real and the status quo is defensible.

The doorway is open. The administrative inspection doctrine was born in a housing case. Residential construction is already licensed, permitted, code governed, and inspected as a condition of occupancy. A post occupancy scheme confined by statute to cause, scope, and neutral review sits comfortably within the framework — and Florida's statute is the existence proof. The proposal is to continue watching an industry society already watches, past the moment the watching now arbitrarily stops.

VI

The Knowledge Gate

A better Hammurabi

Four millennia later, the danger still runs with the structure, and the accountability lapses at year twelve.

THE ANCIENT BASELINE

The oldest builder liability rule on record needed two sentences, and no expiration date.

If a builder builds a house for a man and does not make its construction sound, and the house collapses and causes the death of the owner, that builder shall be put to death; if it causes the death of the owner's son, they shall put the builder's son to death.

Code of Hammurabi §§ 229-230

REJECT

No culpability qualifier. Pure outcome liability, indifferent to storms, latent flaws, and centuries, cannot distinguish the careful builder betrayed by an undetectable flaw from the builder who buried a known hazard. A system that cannot draw that line punishes diligence and recklessness identically.

RECOVER

No expiration. Accountability ran with the structure for the structure's life, because the danger did. The process safety literature reads the provisions as four thousand years of expectation that the designer of an artifact answers for its failure.

SOURCES Robert Francis Harper, *The Code of Hammurabi, King of Babylon* §§ 229-230 (2d ed. 1904); Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, Laws of Hammurabi ¶¶ 229-233 (2d ed. 1997); Hendershot & Murphy, 26 Process Safety Progress 18 (2006).

THE GATE, STATED AS A DOMAIN AGNOSTIC PRINCIPLE

Liability protection that turns on time should be available only where knowledge was unavailable at the moment of the design decision despite reasonable diligence, and never where the designer knew and concealed.

CATEGORY ONE · SHELTERED

The genuinely latent flaw: the void inside the beam, the inclusion inside the billet, the failure no reasonable designer detects. Knowledge was unavailable at the decision even to a diligent actor. Repose is defensible here, and this article defends it.

CATEGORY TWO · NEVER SHELTERED

The North Huntingdon design, the Pinto tank, the ignition switch, the cladding: consequences available at the instant of choice, followed by arrangements that placed them beyond observation. Every equity time creates — lost evidence, faded memory, unfair surprise — was created by the defendant on purpose.

The gate keeps what Hammurabi lacked, a culpability line that spares the diligent, and recovers what modern law abandoned, accountability that concealment cannot outlast. It is nothing more than the principle limitations doctrine has applied since *Bailey v. Glover*, extended to the one time bar that escapes it — and it asks the same two questions of the builder of a garage, the designer of a fuel tank, the author of a flight control system, and the drafter of a statute: what did you know at the decision point, and could the people bearing the consequences find out.

TWO REFORMS, TWO SWITCHES

Neither requires novel doctrine. Each is a transplant from machinery already running.

REFORM ONE · THE GATE

A fraudulent concealment exception in statutes of repose

No shelter for a defendant who, at the time of the design or construction, had actual knowledge of a condition presenting an unreasonable risk of death or serious injury and took affirmative steps that prevented its discovery. Legislative, because equity cannot supply it. Not an experiment: Minnesota has carried the exception for decades. Narrow by design — knowledge means actual knowledge or willful blindness, and concealment requires affirmative acts: the sealed wall, the unchanged part number, the lawyer routed research file. Never mere silence.

There is no path to holding the drafters of the existing statutes liable for the gap, nor should there be; legislative immunity is settled and sound. The accountability available against the builders of bills is the same one this article applies to the builders of everything else: name the design, trace what it foreseeably rewards, and demand the redesign in public.

REFORM TWO · THE WATCHER

Early warning for the built environment

A duty on builders of residential structures to report deaths and serious injuries associated with structural failure, protective orders notwithstanding, to an agency holding record inspection and subpoena authority on the pattern of 49 U.S.C. § 30166; periodic structural inspection of aging stock on the Florida pattern; physical inspection confined within the closely regulated industry doctrine and its precompliance review requirement. The function is epistemic: liability presupposes attribution, and this is the detection layer without which the knowledge element can rarely be proven.

SOURCES ANZ Sec., 582 U.S. 497; Minn. Stat. § 541.051; *Appletree Square*, 815 F. Supp. 1266; *Global-Tech*, 563 U.S. 754; 49 U.S.C. § 30166; Fla. Stat. § 553.899; *Burger*, 482 U.S. 691; *Patel*, 576 U.S. 409; Shavell, 13 J. Legal Stud. 357; *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189 (1989).

CONCLUSION

The closures were not independent accidents.

The repose statute abolished the claim. The abolition was reachable only because the hazard was hidden. The hiding succeeded only because no watcher existed downstream of the certificate of occupancy. And each closure was a design choice by a builder of bills as surely as the void was a design choice by a builder of homes.

The oldest legal code in wide memory refused to let builder accountability expire, and erred only in refusing to ask what the builder knew. Modern law asks what the builder knew everywhere except at the one door where the answer matters most. Open the gate on knowledge, install the watcher, and the patient concealer's strategy stops paying — in every industry that designs things people rely on.

Until then, the statute remains what the specimen revealed it to be: a subsidy, payable in twelve year installments, to whoever hides a hazard best.

Table of Authorities

Travis Gilly, *Design Accountability: Statutes of Repose, the Missing Inspector, and a Knowledge Gate for the People Who Design Things*, working paper, July 2026 (v0.9). Every authority cited in the article, by class, across 5 slides.

UNITED STATES SUPREME COURT

Bailey v. Glover, 88 U.S. (21 Wall.) 342 (1874).

Cal. Pub. Employees' Ret. Sys. v. ANZ Sec., Inc., 582 U.S. 497 (2017).

Camara v. Municipal Court, 387 U.S. 523 (1967).

City of Los Angeles v. Patel, 576 U.S. 409 (2015).

Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970).

CTS Corp. v. Waldburger, 573 U.S. 1 (2014).

DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189 (1989).

Gabelli v. SEC, 568 U.S. 442 (2013).

Global-Tech Appliances, Inc. v. SEB S.A., 563 U.S. 754 (2011).

Glus v. Brooklyn E. Dist. Terminal, 359 U.S. 231 (1959).

Holmberg v. Armbrrecht, 327 U.S. 392 (1946).

Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 501 U.S. 350 (1991).

Lewis v. Marshall, 30 U.S. (5 Pet.) 470 (1831).

Marshall v. Barlow's, Inc., 436 U.S. 307 (1978).

New York v. Burger, 482 U.S. 691 (1987).

See v. City of Seattle, 387 U.S. 541 (1967).

TRW Inc. v. Andrews, 534 U.S. 19 (2001).

United States v. Biswell, 406 U.S. 311 (1972).

United States v. Kubrick, 444 U.S. 111 (1979).

OTHER FEDERAL COURTS

Appletree Square 1 Ltd. P'ship v. W.R. Grace & Co., 815 F. Supp. 1266 (D. Minn. 1993).

Borel v. Fibreboard Paper Products Corp., 493 F.2d 1076 (5th Cir. 1973).

Cortez v. Cook Inc., No. 20-3434 (7th Cir. Mar. 2, 2022).

United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006).

Table of Authorities, continued

STATE COURTS

Ambers-Phillips v. SSM DePaul Health Ctr., 459 S.W.3d 901 (Mo. 2015).

Barker v. Lull Engineering Co., 20 Cal. 3d 413, 573 P.2d 443 (1978).

Berry ex rel. Berry v. Beech Aircraft Corp., 717 P.2d 670 (Utah 1985).

Conway v. Cutler Group, Inc., 99 A.3d 67 (Pa. 2014).

Elderkin v. Gaster, 447 Pa. 118, 288 A.2d 771 (1972).

Escola v. Coca Cola Bottling Co., 24 Cal. 2d 453, 150 P.2d 436 (1944).

Esener v. Kinsey, 240 Ga. App. 21 (Ga. Ct. App. 1999).

Estes v. Bradley, 954 So. 2d 455 (Miss. Ct. App. 2006).

Freezer Storage, Inc. v. Armstrong Cork Co., 382 A.2d 715 (Pa. 1978).

Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 377 P.2d 897 (1963).

Grimshaw v. Ford Motor Co., 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (Ct. App. 1981).

Hayes v. Mercy Hosp. & Med. Ctr., 136 Ill. 2d 450 (1990).

Horton v. Goldminer's Daughter, 785 P.2d 1087 (Utah 1989).

Johnson v. Toll Bros., 2023 Pa. Super. LEXIS 410 (Pa. Super. Ct. Sept. 19, 2023).

Kennedy v. Cumberland Eng'g Co., 471 A.2d 195 (R.I. 1984).

MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).

Noll v. Harrisburg Area YMCA, 643 A.2d 81 (Pa. 1994).

Phipps v. Irby Constr. Co., 636 So. 2d 353 (Miss. 1993).

Robinson v. Shah, 936 P.2d 784 (Kan. Ct. App. 1997).

Tyus v. Resta, 476 A.2d 427 (Pa. 1984).

Venema v. Moser Builders, Inc., 2022 PA Super 171, 284 A.3d 1224 (Pa. Super. Ct. 2022).

Windham v. LATCO of Miss., Inc., No. 2005-CT-02086-SCT (Miss. 2005).

Table of Authorities, continued

STATUTES, REGULATIONS, AND CODES

15 U.S.C. § 2064(b).

21 U.S.C. §§ 360i, 374; 21 C.F.R. pt. 803.

29 U.S.C. § 657(a).

49 U.S.C. § 30166; 49 C.F.R. pt. 579.

42 Pa. Cons. Stat. § 5536.

Act of Nov. 10, 1999, P.L. 491, No. 45; 34 Pa. Code ch. 403.

Fla. Stat. § 553.899 (enacted by S.B. 4-D, 2022).

Minn. Stat. § 541.051.

FDA Food Safety Modernization Act, Pub. L. No. 111-353, 124 Stat. 3885 (2011).

Poison Prevention Packaging Act of 1970, Pub. L. No. 91-601, 84 Stat. 1670 (codified at 15 U.S.C. §§ 1471-1476).

Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000).

Virginia Graeme Baker Pool and Spa Safety Act, Pub. L. No. 110-140, tit. XIV, 121 Stat. 1492, 1794 (2007) (codified at 15 U.S.C. §§ 8001-8008).

Defective Premises Act 1972 (UK).

Int'l Code Council, International Residential Code §§ R311.7, R408.4 (2018).

GOVERNMENT AND LEGISLATIVE MATERIALS

Consent Order, *In re TK Holdings Inc.* (NHTSA 2015).

Deferred Prosecution Agreement, *United States v. Boeing Co.*, No. 4:21-cr-005 (N.D. Tex. Jan. 7, 2021).

Deferred Prosecution Agreement, *United States v. General Motors Co.* (S.D.N.Y. Sept. 2015).

Grenfell Tower Inquiry: Phase 2 Report (Sept. 4, 2024).

H. Comm. on Transp. & Infrastructure, 116th Cong., *Final Committee Report: The Design, Development & Certification of the Boeing 737 MAX* (Sept. 2020).

Nat'l Inst. of Standards & Tech., National Construction Safety Team Investigation of the Champlain Towers South Collapse (ongoing).

Table of Authorities, continued

Anton R. Valukas, *Report to Board of Directors of General Motors Company Regarding Ignition Switch Recalls* (May 29, 2014).

U.S. Nuclear Regulatory Comm'n, *Safety Goals for the Operations of Nuclear Power Plants*; Policy Statement, 51 Fed. Reg. 30,028 (Aug. 21, 1986).

BOOKS, ARTICLES, AND OTHER AUTHORITIES

Susanna Rankin Bohme, John Zorabedian & David Egilman, *Maximizing Profit and Endangering Health: Corporate Strategies to Avoid Litigation and Regulation*, 11 Int'l J. Occup. Envtl. Health 338 (2005).

Peter F. Colwell & Abdullah Yavas, *The Value of Building Codes*, 20 Real Est. Econ. 501 (1992).

Jeffrey Drope & Simon Chapman, *Tobacco Industry Efforts at Discrediting Scientific Knowledge of Environmental Tobacco Smoke: A Review of Internal Industry Documents*, 55 J. Epidemiology & Community Health 588 (2001).

David Egilman & Susanna Rankin Bohme, *Over a Barrel: Corporate Corruption of Science and Its Effects on Workers and the Environment*, 11 Int'l J. Occup. Envtl. Health 331 (2005).

Marc-André Gagnon & Mengying Dong, *What Did the Scientific Literature Learn from Internal Company Documents in the Pharmaceutical Industry? A Scoping Review*, 1 Cochrane Evidence Synthesis & Methods (2023).

Stanton A. Glantz et al., *The Cigarette Papers* (1996).

Michael D. Green, *The Paradox of Statutes of Limitations in Toxic Substances Litigation*, 76 Cal. L. Rev. 965 (1988).

Peter Hanauer et al., *Lawyer Control of Internal Scientific Research to Protect Against Products Liability Lawsuits: The Brown and Williamson Documents*, 274 JAMA 234 (1995).

Robert Francis Harper, *The Code of Hammurabi, King of Babylon* (2d ed. 1904).

Dennis C. Hendershot & John F. Murphy, *Expanding Role of the Loss Prevention Professional*, 26 Process Safety Progress 18 (2006).

Kratky, *Statutes of Repose in Products Liability: Death Before Conception?*, 37 Sw. L.J. 665.

Christopher R. Leslie, Comment, *Den of Inequity: The Case for Equitable Doctrines in Rule 10b-5 Cases*, 81 Cal. L. Rev. 1587 (1993).

Table of Authorities, concluded

David Michaels, *Manufactured Uncertainty*, 1076 Annals N.Y. Acad. Sci. 149 (2006).

David Michaels, *Doubt Is Their Product: How Industry's Assault on Science Threatens Your Health* (2008).

Note, *Statutes of Limitations and Opting Out of Class Actions*, 81 Mich. L. Rev. 399 (1982).

Developments in the Law, *Statutes of Limitations*, 63 Harv. L. Rev. 1177 (1950).

Cora Peterson et al., *Unrealised Potential of Pool Fencing and Life Jackets to Prevent US Drownings*, 32 Injury Prevention 495 (2025).

Restatement (Third) of Torts: Products Liability § 2 (Am. L. Inst. 1998).

Gregory B. Rodgers, *The Safety Effects of Child-Resistant Packaging for Oral Prescription Drugs*, 275 JAMA 1661 (1996).

Gregory B. Rodgers, *The Effectiveness of Child-Resistant Packaging for Aspirin*, 156 Archives Pediatrics & Adolescent Med. 929 (2002).

Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (2d ed. 1997).

Meghan Schiller, *KDKA Investigates*, CBS Pittsburgh broadcast (July 2026) (recording and transcript on file with author).

Gary T. Schwartz, *The Myth of the Ford Pinto Case*, 43 Rutgers L. Rev. 1013 (1991).

Steven Shavell, *Liability for Harm Versus Regulation of Safety*, 13 J. Legal Stud. 357 (1984).

Chauncey Starr, *Social Benefit Versus Technological Risk*, 165 Science 1232 (1969).

Carl F. Stychin, *Dangerous Liaisons: New Developments in the Law of Defective Premises*, 16 Legal Studies 387 (1996).

Diane C. Thompson & Frederick P. Rivara, *Pool Fencing for Preventing Drowning of Children*, Cochrane Database of Systematic Revs. (1998), CD001047.

Robert A. van Kirk, Note, *The Evolution of Useful Life Statutes in the Products Liability Reform Effort*, 1989 Duke L.J. 1689.

W. Kip Viscusi, *Corporate Risk Analysis: A Reckless Act?*, 52 Stan. L. Rev. 547 (2000).

Zhen Wang et al., *Quantitative Safety Goals for Fusion Power Plants*, 45 Int'l J. Energy Rsch. 9694 (2021).