

**TIME LIMITATION ISSUES**  
**2020 IADC Midyear Meeting**  
**Pebble Beach**  
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# Florida International University (FIU) Pedestrian Bridge Collapse March 15, 2018



On March 15, 2018, a 175-foot-long (53 m) structure that was a section of a pedestrian bridge that was under construction at the FIU campus near Miami, Florida, collapsed onto the road below (Tamiami Trail). This incident resulted in six deaths (5 motorists and 1 employee), eight injuries, and eight vehicles being crushed underneath.

The National Transportation Safety Board conducted a roughly 18-month-long investigation. At the conclusion, NTSB Chairman Robert Sumwalt noted “[t]here were errors up and down the line.” In addition, The New York Times concluded that “the chief probable cause” was “the design by FIGG Bridge Engineers”, but that “every company, institution and agency involved in the project was partly to blame for the bridge collapse”.

The causes and responsible parties were many and are summarized as follows:

**Design Professional:**

The FIGG Bridge Engineers (FIGG) made significant design errors in the determination of loads, leading to a severe underestimation of the demands placed on critical portions of the pedestrian bridge; and significantly overestimated the capacity of the key structural members

FIGG Bridge Engineers’ analytical modeling for the bridge design resulted in a significant underestimation of demand at critical and highly loaded nodal regions.

FIGG used poor judgment when it determined the bridge was a redundant structure, and then erroneously used a redundancy factor of 1.0, which is commonly used for structures with redundant load paths.

**State/University/State Agency**

Bolton Perez Associates Consulting Engineers, the State’s construction and engineering inspection contractor, for failing to exercise independent judgment in classifying cracks or recognizing danger of collapse.

Bolton, Perez and Associates Consulting Engineers had the authority to direct or authorize partial or complete road closures as necessary, acting in concert with the Florida Department of Transportation and Florida International University; however, none acted to close the road under the bridge, contributing to the severity of the impact of the bridge collapse.

## **Contractors**

Munilla Construction Management (MCM), the design-build contractor that had teamed with FIGG, failed to contradict FIGG's assessment that the bridge was safe despite cracks. MCM deferred to the decision of the engineer of record and failed to exercise its own independent professional judgment, as a constructor of the bridge, to close the traffic on SW 8th Street until the cause of the cracks were conclusively determined and peer-reviewed. OSHA called the contractor's failure to take those steps "unreasonable."

Although it may be generally accepted that concrete itself is susceptible to cracking, the rate of premature concrete distress was clear evidence that the structure was progressing toward failure and should have alerted FIGG Bridge Engineers and MCM to the origin of the distress mechanism that was causing the cracking and the rapidity of cracking progression.

This paper uses the framework of this unfortunate bridge collapse to anchor an analysis of the time limitations applicable to legal claims that might arise against various interested parties. The analysis focuses on the different treatment this receives in different international jurisdictions including: United States, Germany and Canada.

## **Time Limitations under USA Common Law - State Jurisdiction Michigan**

Following passage in both houses of the Michigan Legislature, Senate Bill No. 77 was signed into law by Governor Rick Snyder on Oct. 4, 2011. This action by the state Legislature restored the applicable limitations periods against design professionals and contractors to two years and three years, respectively, and overrules the Michigan Supreme Court decision in *Ostroth v Warren Regency*, 474 Mich 33 (2006).

By way of background, the *Ostroth* decision—whether inadvertently or purposefully—instantly abrogated decades of law and ignored long established rules relative to the statute of limitations and the statute of repose periods for design professionals and contractors. The *Ostroth* ruling also segregated the construction

industry from general limitations law, and in fact, lengthened all applicable limitations periods specific to the state's design and construction industry.

*Ostroth* stood for the proposition that Michigan Compiled Law (MCL) 600.5839 acted not only as a statute of repose (its intended purpose) but also as a statute of limitations against design professionals and contractors. This, in turn, lengthened the applicable limitations period from two years for design professionals and three years for contractors to six years for both.

Industry participants were left asking: "What is the difference between a limitations period and a repose period, and when does each commence?" A limitations period is said to start running at the time a claim accrues. In the case of damage to person or property, a claim accrues at the time that the wrong upon which the claim is based was done, regardless of the time when the damage results. Stated differently, a claim accrues on the day which an event (such as an injury) that triggers liability is discovered (or should have been discovered). A statute of repose, on the other hand, begins to run based upon a specified event. In the case of an action involving the construction industry, that specified event is the occupancy, use or acceptance of the improvement to real property, as provided in MCL 600.5839.

The Court's ruling in *Ostroth* eliminated the rule that the statute of limitations period began to run when a claim accrues. Instead, the *Ostroth* court ruled that all actions, whether brought against design professionals or contractors, commenced upon the time of occupancy of the completed improvement, use or acceptance of the improvement to real property (as written in the MCL 600.5839 – originally intended as a statute of repose). Senate Bill No. 77 effectively returned the limitations periods to those called for in the MCL 600.5805, which is Michigan's statute pertaining to injuries to persons or property. Specifically, subsection (14) has been changed to clarify the period of limitations for an action against a state licensed architect, professional engineer, land surveyor or contractor based on an improvement to real property.

Thus, an action against a state licensed architect or professional engineer or licensed professional surveyor arising from professional services rendered is an action charging malpractice subject to the period of limitation contained in MCL 600.5805 subsection (6). Subsection (6) states that the period of limitations is two

years for an action charging malpractice. Therefore, all actions against state licensed architects or professional engineers or licensed surveyors must be brought within two years of the accrual of the action.

Relative to contractors, MCL 600.5805 subsection (10) now reads that except as otherwise provided in this section, the period of limitations is three years after the time of the death or injury for all actions to recover damages for the death of a person or for injury to a person or property. Accordingly, any action against a contractor for injury due to alleged negligent acts has been restored to three years.

Accordingly, with the exception of gross negligence, all actions against design professionals and/or contractors are barred unless that action is brought within six years of the time of occupancy of the completed improvement or use or acceptance of the improvement to the real property.

### **Time Limitations under Quebec (Canada) Civil Law**

Casualties, injuries and material damages connected to vehicles (even indirectly) fall under the Quebec compulsory indemnification program.

- The time limitation to file a claim is 3 years starting from the day of the accident; no possible claim against anyone responsible of the collapse.
- Injuries of the employee of the Contractor who was working on the bridge: another special Quebec State compulsory indemnification program; almost no possible claim against anyone (except a third party responsible of the accident);
- All other damages : reconstruction cost, class action of the commuters etc. : normal liability rules according to the Quebec civil code:
- Claims versus the Design Professionals:  
Special fault presumption if the collapse takes place within 5 years after the end of the work; this is not a time limitation issue to sue; Time limitation to sue: 3 years starting the day of the collapse;

Exception to the 3 year time limitation:

Renunciation;

Admission

Repairs (when simple deficiencies, no collapse);

Progressive appearance of damages (not in a collapse case): the 3 year delay starts when the victim may realize the reality of the deficiency (example: a tiny crack in a wall becoming bigger and bigger as the years go by)

Claims versus the State/ University: same time limitation principles apply;

Claims versus Contractors: same time limitation principles apply;

Effectiveness of Contract Provisions seeking to Define Claim Time Limitation

What happens when the Design Professional is dead?

The complete blizzard in the presence of progressive appearance of damages