No. 23-0048

In the Supreme Court of Texas

Ford Motor Company,
Petitioner,

v.

Jennifer Parks, Individually and as Guardian of the Person and Estate of Samuel Rivera Gama; and Nicolasa Game Dale,
Respondents.

Appeal from the Fifth District Court of Appeals at Dallas, Texas, No. 05-21-00632-CV, and the 439th Judicial District Court of Collin County, Texas, Cause No. 429-03411-2021, the Honorable Jill Willis, Presiding

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN TORT REFORM ASSOCIATION, THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC., THE ALLIANCE FOR AUTOMOTIVE INNOVATION, THE NATIONAL ASSOCIATION OF MANUFACTUERS, AND THE RETAIL LITIGATION CENTER AS AMICI CURIAE SUPPORTING PETITIONER

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United State of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. The Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Tort Reform Association ("ATRA") is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed amicus curiae briefs in cases involving important liability issues.

The National Federation of Independent Business Small Business Legal Center, Inc. ("NFIB Legal Center") is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. ("NFIB"), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its

members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members.

The Alliance for Automotive Innovation ("Auto Innovators") is a trade association representing the voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, Auto Innovators represents manufacturers of cars and light trucks sold in the United States. Auto Innovators is directly involved in regulatory and policy matters affecting the light-duty vehicle market. Members include motor vehicle manufacturers, original equipment suppliers, and technology and other automotive-related companies.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs 13 million men and women, contributes $2.85 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Retail Litigation Center represents national and regional retailers, including many of the country's largest and most innovative retailers, across a breadth of retail verticals. The Retail Litigation Center is the only trade organization solely dedicated to representing the retail industry in the

courts. The Retail Litigation Center's members employ millions of people throughout the U.S., provide goods and services to tens of millions more, and account for tens of billions of dollars in annual sales. The Retail Litigation Center offers retail-industry perspectives to courts on important legal issues and highlights the industry-wide consequences of significant cases.

Amici write to explain the importance of construing the Texas products-liability repose statute according to the plain language enacted by the Legislature in order to ensure predictability for a variety of product manufacturers and sellers across the state. Amici further write to explain how reading the repose statute as Respondents urge would defeat that statute's purpose and negatively impact businesses across the state. Contrary to the Legislature's intention to prevent trials over long-ago sales, Respondents' reading would require businesses to proceed to trial and uncover years-old evidence that may no longer even exist to substantiate a repose defense intended to protect defendants from that very burden in the first place, thereby driving up the cost of doing business for product manufacturers and retailers across Texas.[1]

[1] No counsel for a party authored this brief in whole or in part, and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* Tex. R. App. P. 11(c).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This Court should reverse the judgment of the court of appeals and use this case to make clear that Texas's statute of repose for products-liability claims means what it says: a plaintiff's product liability claim is barred as a matter of law if it is not filed within 15 years from "the date of the sale of the product by the defendant." TEX. CIV. PRAC. & REM. CODE § 16.012(b). Under its plain meaning, this statute bars a claim if the defendant transferred the product at issue to a buyer for a price over 15 years before the plaintiff filed suit. And this holds true even if it remains unclear whether the buyer paid in full for the product when the product was transferred, and even if the exact date of transfer remains unknown.

Because the statute of repose runs from the "sale" of the vehicle but the law does not define that term, this Court applies its ordinary meaning. *Tex. Lottery Comm'n v. First State Bank of Dequeen*, 325 S.W.3d 628, 635 (Tex. 2010). The ordinary meaning of "sale" is "[t]he transfer of property or title for a price." *Sale*, BLACK'S LAW DICTIONARY (11th ed. 2019). Indeed, this is the definition that the Fifth Circuit recently and correctly adopted when applying Texas's statute of repose on very similar facts. *See Camacho v. Ford Motor Co.*, 993 F.3d 308, 312 (5th Cir. 2021) (Willett, J.).

Under that definition, the "sale" of a product occurs when the product is transferred to the buyer, even if the buyer has not fully paid for the product at the time of transfer. This comes as no surprise. Sales occur every day where the buyer does not immediately pay full price for the product. These

include sales on credit, installment sales, and conditional sales. *See Sale*, BLACK'S LAW DICTIONARY (11th ed. 2019) (listing these different types of sales). And this Court has recognized as much. In *Gulf Insurance Co. v. Bobo*, this Court held that a vehicle sale was "completed" upon the transfer of the vehicle, even though the buyer remained obligated to arrange financing and pay for the vehicle. 595 S.W.2d 847, 848 (Tex. 1980). Ford is therefore entitled to judgment because there is no material dispute that Ford transferred the vehicle to Town East Ford on May 9, 2000, for a price, and that date is over 15 years before this action was commenced. Respondents argue that, because a sale is the transfer of the product "for a price," the sale does not occur until the buyer pays the full price. But that misunderstands the ordinary meaning of "sale." The "for a price" condition merely requires consideration, distinguishing sales from gifts; it says nothing about *when* the sale occurs or *how* the sales price is paid.

Even though Ford is entitled to judgment as a matter of law based on undisputed evidence of the date it transferred the at-issue vehicle for a price—*i.e.*, the date it sold the vehicle—this Court should also hold that Ford does not need to prove the exact date of the sale so long as it proves the sale must have happened outside the 15-year repose window. Nothing in the statute of repose requires proof of the precise date of sale, and for transactions that occurred over a decade before the commencement of litigation, it may be very difficult for businesses to establish that exact date. This Court should accordingly hold that defendants may invoke the statute of repose

by proving, as Ford did here, that the vehicle necessarily was sold over 15 years before the plaintiff brought suit because someone else possessed or held title to the product that many years ago.

Reversing the judgment of the court of appeals and holding that Ford twice established its entitlement to judgment under Texas's statute of repose would ensure businesses across the country the predictability that the Legislature intended. The statute of repose reduces risk and uncertainty that businesses face from having to defend product liability suits for products sold fifteen years or more ago. *Methodist Healthcare Sys. of San Antonio, Ltd. v. Rankin*, 307 S.W.3d 283, 286 (Tex. 2010). But the holding below reintroduced that uncertainty and risk by in effect holding that defendants will be put to trial if they cannot affirmatively produce a sales receipt showing the precise day over a decade-and-a-half in the past that a buyer fully paid for the product at issue. That is indefensible as a textual matter and defeats the entire point of the statute. This Court should reverse to ensure that the statute of repose serves its essential purpose and that products-liability defendants retain an opportunity to obtain summary judgment on that critical timeliness defense.

ARGUMENT

I. Ford Motor Company's "Release" of a Vehicle Constitutes a "Sale" Under the Plain Text of the Statute of Repose.

In construing statutes, this Court relies "on the plain meaning of the text." *First State Bank of Dequeen*, 325 S.W.3d at 635. That is because the Court's "objective in statutory construction is to give effect to the Legislature's intent," and "the best indicator of what the Legislature intended is what it enacted." *Brazos Elec. Power Coop., Inc. v. Tex. Comm'n on Env't Quality*, 576 S.W.3d 374, 383–84 (Tex. 2019). This Court "presume[s] that the Legislature chooses a statute's language with care, including each word chosen for a purpose, while purposefully omitting words not chosen." *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011) (citing *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008)).

This Court therefore "begin[s] with the statute's words." *Id.* (citing TEX. GOV'T CODE § 312.003). And "where text is clear, text is determinative." *BankDirect Cap. Fin., LLC v. Plasma Fab, LLC*, 519 S.W.3d 76, 78 (Tex. 2017) (quoting *Entergy Gulf States v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009)) (cleaned up).

Here, the text *is* clear and determinative. The applicability of Texas's products-liability statute of repose depends on when the "sale" of the product by the defendant occurred. TEX. CIV. PRAC. & REM. CODE § 16.012(b). The word "sale" has a plain and ordinary meaning: the transfer of property or title for a price. A sale thus occurs upon the transfer of property for a price,

whether the price is paid immediately, at some later date, or over time in installments. Under this straight-forward reading of the statutory text, Ford was entitled to judgment because there is no material dispute that it transferred the vehicle at issue to Town East Ford on May 9, 2000, for a price.

A. A "sale" is the transfer of property from one party to another for a price.

Texas's products-liability statute of repose states that "a claimant must commence a products-liability action against a manufacturer or seller of a product before the end of 15 years after the date of the sale of the product by the defendant." TEX. CIV. PRAC. & REM. CODE § 16.012(b). By the statute's plain terms, the repose clock runs not from the date of the sale of the product at issue *to the plaintiff*, but from the date of the sale of that product *by the defendant*, though the two may be the same.

The key question when applying the statute of repose is, therefore: when does that "sale" occur? Because the statute does not define "sale," this Court must apply "the plain and ordinary meaning of the term and interpret it within the context of the statute." *EBS Sols., Inc. v. Hegar*, 601 S.W.3d 744, 758 (Tex. 2020). And to discern this meaning, this Court "start[s] with dictionaries and then consider[s] the term's usage in other statutes, court decisions, and similar authorities." *Id.* (cleaned up).

Black's Law Dictionary defines a "sale" simply as "[t]he transfer of property or title for a price." *Sale*, BLACK'S LAW DICTIONARY (11th ed. 2019).[2] The Uniform Commercial Code as codified by Texas law confirms this definition. Under the UCC, a sale is defined as "the passing of title from the seller to the buyer for a price." TEX. BUS. & COM. CODE § 2.106(a).

Given the uniformity between dictionaries and Texas law, the Fifth Circuit recently held that the plain meaning of "sale" for purposes of the Texas statute of repose is "[t]he transfer of property or title for a price." *Camacho*, 993 F.3d at 312. Neither party here disputes this definition of "sale" or the correctness the Fifth Circuit's *Erie* guess in *Camacho*, but this Court has never interpreted the statute of repose or, to *amici's* knowledge, confirmed the ordinary meaning of the word "sale." It should adopt the ordinary meaning of "sale" set forth in *Black*'s and adopted by *Camacho*: the transfer of property or title for a price.

B. A "sale" occurs upon the transfer of the property, whether the agreed price is paid at the time of transfer or later.

Under the ordinary meaning of "sale," a sale occurs when the property at issue (or title over the property) is *transferred*, regardless of when full

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[2] The 1999 edition of *Black's*—the edition published most recently after the statute of repose was enacted in 1993, *see* An act relating to reform of certain procedures and remedies in civil actions, 78th Leg., R.S., ch. 204, § 5.01, 2003 Tex. Sess. Law Serv. ch. 204—provides the same definition. *See Sale*, BLACK'S LAW DICTIONARY (7th ed. 1999). Because the definitions are the same, this brief for ease of reference cites the 2019 edition.

payment is made. The plain language of the definition of "sale" makes this clear. A sale is the "*transfer* of property or title." *Sale*, BLACK'S LAW DICTIONARY (11th ed. 2019) (emphasis added). The language "for a price" in the definition is the condition on which the transfer is made, but nothing requires that the price be paid immediately. Respondent in effect asks this Court to adopt a contrary definition of "sale" as the transfer of property or title *upon the full payment* of a price. *See* Resp. Br. 23 (arguing that Ford's evidence "does not show the payment of the purchase 'price'"). But the only action mentioned—and thus the only action giving rise to a sale—in any of the definitions of "sale" is "transfer."

The "for a price" condition on the transfer is meant only to distinguish sales from gifts and barters, not to time the sale based on *when* the price is paid. Underlying the ordinary meaning of "sale" is the age-old common-law concept of consideration—an exchange of value for property or title. *Compare Sale*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The transfer of property or title for a price."), *with Consideration*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Something . . . bargained for and received by a promisor from a promisee . . . ."). So long as there is consideration—whether that consideration is in the form of immediate payment or a promise of future payment—then there is a contract and a sale. *See Sale*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[A sale] is a contract between two parties, one of whom acquires thereby a property in the thing sold . . . ." (quoting WILLIAM W. STORY, A TREATISE ON THE LAW OF SALES OF PERSONAL PROPERTY § 1, at 1 (1853)). If there

is no consideration, the transfer is a gift; if the consideration is another article of property, the transfer is part of a barter; but if the consideration is a price, whenever paid, then the transfer completes the sale. *Id.*

It is unsurprising, then, that multiple categories of sales occur not upon full payment of the agreed price, but upon transfer of the property. Take for example, "sales on credit." These are sales where the seller makes "delivery of possession, but with payment deferred to a later date." *Sale*, BLACK'S LAW DICTIONARY (11th ed. 2019). These constitute sales because they are "for a price," and the sale occurs under the ordinary meaning of sale with the "transfer of property," even though payment is deferred to a later date. Indeed, there is no basis to conclude that a product has not yet been sold when the buyer has full possession and use of the product precisely because he promised to make a future payment. Likewise, "installment sales," which are common with automobile purchases, occur when "the buyer makes a down payment followed by periodic payments and the seller retains title or a security interest." *Installment Sale*, BLACK'S LAW DICTIONARY (11th ed. 2019). Again, the sale occurs when the seller transfers the product at issue to the buyer, even though the buyer agrees to make periodic payments in the future.

This Court has accordingly held that a sale is complete upon transfer of the property at issue even where the sale is conditioned on future payment. In *Gulf Insurance Co. v. Bobo*, a buyer agreed to purchase a used truck from its seller for the amount that was still owed on the truck. 595 S.W.2d at 848.

The buyer picked up the truck and agreed to meet later to complete the financing and receive the document of title. *Id.* But before that could be done, the buyer got into an accident. *Id.* The injured victims sought damages under the seller's insurance policy, which extended only to people he authorized to drive the vehicle. *Id.* But this Court held that the seller could not authorize anyone to drive the truck because the sale was already complete when the accident occurred. As the Court explained, "there was a *completed* contract which [seller] had performed by delivering the truck in exchange for the consideration of [buyer's] promise to pay [seller's] debt at the bank." *Id.* (emphasis added). If the buyer failed to perform his promise to pay, it would not mean that the sale had not happened; rather the contract would be "subject to recission." *Id.*

And this rule that the sale occurs on the transfer of the property or title does not change simply because the seller reserves a security interest in the property to ensure future payment. The UCC, as adopted by Texas law, provides that "[u]nless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place." TEX. BUS. & COM. CODE § 2.401(b).[3] Put differently, even

[3] This, of course, is a default rule because it contemplates that the parties to a transaction may "explicitly agree[]" to another rule. *Id.* A buyer and seller

when the seller retains a security interest because the buyer has not completed payment, the default rule is that the sale occurred when the property was transferred to the buyer.

C. Ford is entitled to judgment under the statute of repose because the "sale" of the vehicle occurred on May 9, 2000.

Ford is entitled to judgment applying the ordinary meaning of the word "sale" in the statute of repose. There is no dispute that Ford transferred the vehicle at issue to Town East Ford on May 9, 2000, which is well outside the 15-year statute of repose. This is because Ford's uncontested business record—the Mini 999—lists a "Release" date which is the date that Ford "gives possession, custody and control of the vehicle to the dealer, by releasing the vehicle to the carrier." Pet. Br. 5; *see also* Resp. Br. 10 (describing "release" as "the point at which the vehicle leaves Ford's possession custody, and control" (internal quotation marks and citation omitted)).

There is also no material dispute that the transfer was "for a price." The Vehicle Terms of Sale Bulletin states that each "[*p*]*ayment* for each VEHICLE *purchased* by the Dealer shall be made in *cash* unless the invoice or other Company notice provides otherwise, in which event the terms of the invoice or other notice shall govern." Vehicle Terms of Sale Bulletin between Ford and dealer, Pet. Br. Apx. Tab M, 3CR2665 (emphasis added). So absent any

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could therefore explicitly agree that transfer of title, and thus the "sale," occurs at a different time.

other invoice or notice—and there is none—the vehicle was indisputably transferred to Town East Ford on the condition that it would make a payment in the form of cash to Ford.

Because the vehicle was transferred for a price on May 9, 2000, it was sold on that date and the statute of repose applies. The lower court disagreed with this conclusion because it found that Ford's evidence contained contradictions about whether "Ford . . . receives payment on the release date," Resp. Br., Ex. 1 at 21. And Respondents now make the same argument, contending that there is contradictory evidence as to whether Town East Ford "actually . . . paid [the agreed price] on the date the vehicle was 'released' from Ford to Town East Ford. Resp. 21; *see also e.g.*, Resp. 3 (arguing Ford must establish "when the price was paid").

Respondents' argument and the lower court's decision, however, are both based on a mistaken understanding of when a "sale" occurs. As explained above, a sale occurs under the ordinary meaning of that term on the date the seller transfers the property or title to the property for a price. Ford accordingly sold the vehicle at issue on the day it transferred the vehicle to Town East Ford, whether Town East Ford paid the agreed price that same day, the next day, or some later and unknown day. So even if there were contradictory evidence as to when Town East Ford made payment—and as Ford correctly argues, there is not—Ford is nevertheless entitled to judgment because "the way the dealership financed the purchase is irrelevant to whether a sale occurred." *Camacho*, 993 F.3d at 313.

II. The Statute of Repose Does Not Require a Defendant to Prove the Exact Date of Sale If the Defendant Proves that the Sale Necessarily Occurred Outside the 15-Year Period.

This Court should also clarify that, even if Ford could not prove the exact date on which the sale occurred, the statute of repose does not require such proof. The statute of repose only requires proof that the action was not commenced "before the end of 15 years after the date of the sale of the product by the defendant." TEX. CIV. PRAC. & REM. CODE § 16.012(b). Thus, so long as a defendant can prove that it transferred the product at issue for a price over 15 years before the action was commenced, it is entitled to judgment under the repose statute. *See* Pet. Reply Br. 7–12.

The distinction between proving the exact date of sale and proving that the sale occurred at least 15 years prior to suit is not a semantic or theoretical one. After more than a decade, it may be difficult—if not impossible—for a defendant to produce records proving the exact date that it sold a specific product by transferring it to a buyer for a price. Indeed, given the challenge for a large, multi-national entity to find the receipt, it might be well-nigh impossible for a small business to meet that burden. But that practical challenge should not foreclose the Texas Legislature's goals with respect to repose. It means only that courts should recognize multiple routes to the same goal. For example, if a seller can prove by some other means that possession of the product occurred at least 15 years prior to suit, then that is all the statutory text demands.

This case illustrates the difference. Although Ford has established the precise date on which the vehicle was sold because it kept records of when vehicles were released to dealerships, the plain text of the statute allows Ford an alternate route to judgment under the repose statute. It may rely on uncontradicted evidence that a third-party held title to the vehicle more than 15 years before Respondents filed this suit because that fact necessarily establishes that Ford sold the vehicle prior to that date. *See* Pet. Reply Br. 9 (collecting evidence).

This Court should accordingly clarify for businesses across the country that this alternate route is a viable one grounded in statutory text, logic, and basic common sense. It should hold not only that a sale occurs upon the transfer of the product at issue, *see supra*, but that defendants like Ford may alternatively prove that, whatever the exact date of sale, the sale must have been over 15 years before the plaintiff commenced the products-liability suit.

III. Adopting Respondents' Misreading of the Statute of Repose Would Defeat the Entire Purpose of Providing Predictability.

Respondents' misreading of Texas's products-liability repose statute would frustrate the very purpose of the law and violate the presumption against ineffectiveness. *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS § 4 (2012) ("A textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored."). This precedent would disrupt the risk allocation that

the Legislature set not only for the auto-manufacturing business, but for all businesses that produce and sell durable goods.

Repose statutes were the legislative response to the great expansion of products liability in the 1960s and 1970s. Prior to repose statutes, businesses "face[d] never-ending uncertainty as to liability for their work," *Rankin*, 307 S.W.3d at 286, and they bore the unforeseeable costs associated with going to trial on an unpredictable number of decades'-old disputes. On top of this, "[i]nsurance coverage . . . would always remain problematic" for manufacturers and sellers absent repose statutes. *Id.*; *see also Compass Bank v. Calleja-Ahedo*, 569 S.W.3d 104, 112 (Tex. 2018) (quoting same); Richard A. Epstein, *The Unintended Revolution in Product Liability Law*, 10 CARDOZO L. REV. 2193, 2215–16 (1989) (explaining that the "associated administrative costs [were] too hard to price"). This created an overall difficult condition for product manufacturers and sellers of all types to do business in Texas.

Texas's repose statute helped correct that dynamic. "[T]he key purpose of a repose statute is to eliminate uncertainties." *Rankin*, 307 S.W.3d at 286. After all, "the risk of error is great when the interval between an alleged wrongful act and its harmful consequence is a protracted one"—a "particularly strong" justification "in the case of product defects." *McCann v. Hy-Vee, Inc.*, 663 F.3d 926, 930 (7th Cir. 2011). By enacting a statute of repose, therefore, the Legislature created a more predictable legal environment for businesses. *See Nelson v. Krusen*, 678 S.W.2d 918, 926 (Tex. 1984) (Robertson, J.,

concurring) (explaining that statutes of repose have economic purposes, including for example "promot[ing] stability in insurance rate-making").

Indeed, statutes of repose are in some ways even more critical than their better-known cousins, statutes of limitations. In 2009, for example, this Court considered whether a statute that "purport[ed] to revive claims otherwise 'barred by limitations'" in fact "revive[d] claims extinguished by a statute of repose." *Galbraith Eng'g Consultants, Inc. v. Pochucha*, 290 S.W.3d 863, 864 (Tex. 2009). This Court concluded that "[s]uch a construction would defeat the recognized purpose for statutes of repose, that is, the establishment of a definite end to the potential for liability." *Id.* at 868.

Likewise, the Supreme Court of the United States consistently enforces statutes of repose for the same reason. For instance, in *CTS Corp. v. Waldburger*, the Court explained that statutes of repose are animated by "a distinct purpose"—they reflect "a legislative judgment that a defendant should be free from liability after the legislatively determined period of time." 573 U.S. 1, 8–9 (2014) (cleaned up). More than that, repose statutes "protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise." *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (describing limitations and repose statutes at a time when the two were not as conceptually bifurcated as they are today).

This is precisely the type of case that the statute of repose is designed to bar. There is no dispute that the vehicle at issue passed to an end-user (here, a driver) over 15 years ago. Respondents admit there was a lease during that time. *See* Resp. Br. 18 (arguing that the "'sale' turned out to be a lease"). And Ford has provided records of who held title, when the vehicle was built, and when the vehicle was released to a dealership—the only entity lawfully allowed to make sales to consumers. *See* Resp. Br., Ex. 1 at 8–9 (terms of who held title), 16 (build date), 17, 19 (release date). Respondents nevertheless argue that the statute of repose does not apply because Ford does not have the records of precisely when it received payment in full. This demand of specific documents at summary judgment when there is undisputed evidence that the car was released to end users is a prime example of why the statute of repose was enacted—to prevent issues of proof that reasonably arise due to the passage of a decade and a half (and in this case, more) from creating liability on a products liability theory.

Respondents concede, as they must, that the statute of repose "exists to protect defendants who are prevented from 'answering claims' due to . . . 'lost or destroyed records.'" Resp. Br. 29 (quoting Pet. Br. 17). Yet in the same breath, Respondents argue that this does not "excuse" a "failure to maintain the records needed to prove the defense." *Id.* In other words, Respondents would have this Court hold that the repose statute protects defendants who lack records around the time of the sale of a product, so long as they maintained the very records that the repose statute exempts them

from maintaining. That is not only incorrect as a matter of law, but would set a precedent contrary to the entire purpose of the statute of repose by creating harmful uncertainty for businesses across the country that produce and sell durable goods in Texas.

CONCLUSION

The judgment of the Fifth District Court of Appeals should be reversed.

Respectfully submitted.

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