

# State of the Construction Defects Industry: What the Same & What's New?



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Pete Fowler  
**CONSTRUCTION**  
Services, Inc.

## INTRODUCTION

Pete Fowler Construction Services, Inc. has been talking, presenting and writing about construction defects (CD) and CD litigation for a long time. In 2011 Pete and Alex presented a program called The Construction Defect Lifecycle. Lots has happened since then. So Pete and Alex are back to present "State of the Construction Defect Industry: What's the Same and What's New."

## PROGRAM OUTLINE

1. Introduction
2. Where Have We Been?
3. What's the Same?
4. What's New?
5. Where are We Going?
6. How Do We Get There?
7. Conclusion

## LEARNING OBJECTIVES

- Introduction to Construction Defects (CD) and the strange world of CD Litigation.
- Discuss the history of the CD industry.
- Discuss building performance standards, investigation practices, and how they relate to Construction Defects.
- Explore where the industry is headed and how we're going to get there.

## BACK-UP MATERIALS

1. CD Lifecycle 2011
2. Portfolio Management

## PROGRAM CONTENTS

1. Introduction
2. Where Have We Been?
  - A. Common Construction Defects
  - B. CD Lifecycle
  - C. Aluminum Windows & Other Products
  - D. The Great Recession
  - E. The Construction Defect Lifecycle
3. What's the Same?
  - A. Plaintiff Attorneys Remain Very Assertive & Entrepreneurial
  - B. Windows
  - C. Defense Attorneys & Litigation
  - D. The CD Model
  - E. Portfolio Management of Construction Claims
4. What's New?
  - A. Drained Walls
  - B. Wrap Insurance Policies
  - C. Building Codes
  - D. CD Litigation
  - E. Design & QC
  - F. The Economy
  - G. Leaking Buildings
  - H. Class Action Litigation
  - I. Commercial Buildings and Public Work
5. Where are We Going?
  - A. The Future
  - B. Better Buildings
  - C. Building Information Modeling
  - D. Window Industry
  - E. Defects
  - F. Labor
6. How Do We Get There?
  - A. ABC's of Risk Management
  - B. Continuous Improvement
  - C. Building Industry
  - D. Deep Thoughts
7. Conclusion & Q&A

# Portfolio Management of Construction Claims

Pete Fowler

June 23, 2011

For building industry players who are engaged in multiple construction claims (builders, general contractors, larger trade contractors, suppliers, material and product manufacturers, insurance companies, attorneys) each case can be considered a single battle in a larger war. Deciding how much to spend on each claim – each battle – is hard. How do these expensive decisions get evaluated? Although it should not be guesswork, it often is. PFCS has created a structured process for making these complicated, difficult, strategically important, return-on-investment (ROI) decisions.

PFCS will show you a method for managing your portfolio of construction claims, helping you develop a process for evaluating the costs of various scenarios in construction claim handling. At any point in any case, whether you've spent \$1.00 or \$3 million, you can ask and answer, or at least estimate, these key questions: How much has been spent so far? How much will it cost to get out now? What is a small fight worth? A big fight? What might trial costs look like, and is it worth the risk? As anyone familiar with litigation knows, each of these questions is likely to have best-likely-worst case answers.

The cheapest option is sometimes to get out of the case early, after only the most preliminary analysis. But claims run the gamut, so sometimes a long, expensive fight is the cheapest, best solution, especially if a good outcome will influence other cases.

## KEY SYSTEM COMPONENTS

1. **Claims Management Plan:** Brief strategy and tactical document including written objective, executive summary, litigation budget, written agreements with attorney and other vendors, a timeline, and a Claims Plan Manager job description.
2. **Company Level Analysis:** Worksheet that is a master list of all cases with best-likely-worst case scenario figures and a strategy summary for each. This includes a summary of all the individual Project Level Analysis worksheets.
3. **Project Level Analysis:** Worksheets for each case including best-likely-worst case figures for Attorneys, Experts, Other and Settlement/Judgment costs at various levels of litigation including immediate settlement, a small fight, a big fight and through trial. This includes a summary of the Vendor Scope-Budget Matrix worksheets, plus a settlement hypothesis.
4. **Vendor Scope-Budget Matrix:** This is an individual budget from each vendor on each project broken down to conform with the Project Level and Company Level Analysis worksheets.
5. **Meeting Agenda / Minutes:** Structure for preparing for, reviewing and updating the analysis periodically.

For the full set of tools including templates for Portfolio Management click over to:  
<http://www.petefowler.com/2017215-16-aama-western-region-winter-summit>

# We know buildings

EXPERTISE

PROJECT MANAGEMENT

TECHNOLOGY

STANDARDS

RESULTS

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Pete Fowler  
**CONSTRUCTION**  
Services, Inc.



# State of the Construction Defect Industry

What's the Same  
&  
What's New



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Pete Fowler & Alex Prokop

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1. INTRODUCTION

# PFCS: We Know Buildings



# PFCS: Who We Are

## SOLUTIONS

We specialize in creating **REAL PRACTICAL SOLUTIONS** that help our clients spend the right amount, on the right work, at the right time.



# PFCS: We Know Buildings



## CLIENTS

- Property Owners & Managers
- Builders & Developers
- Contractors
- Product Manufacturers
- Insurers
- Lawyers





# The PFCS Way: SOLUTIONS

- **EXPERTISE:** Technical experts who are focused on real practical solutions is surprisingly hard to find. We found them. And we work to keep that focus.
- **PROJECT MANAGEMENT:** To deliver valuable work with measurable return on investment (ROI), we have to manage the Scope, Budget and Schedule of our work.
- **TECHNOLOGY:** We use proprietary technology to create valuable work faster, better and cheaper, to make the information available to all applicable stakeholders, and to create a permanent digital record at no extra cost.
- **STANDARDS:** To help clients manage building lifecycle performance and costs, we compare each project to industry standards and best practices, then apply professional judgment to develop strategies and step-by-step plans for maximizing ROI for maintenance and repair expenditures.



# PFCS Services

## CLAIMS & LITIGATION

- Construction Defect Litigation  
(Also see BLM)
- General (Property) Liability Claims
- Construction Accidents
- Traditional Claims related to contracts, payments, performance, change orders and delays

## BUILDING LIFECYCLE

- Building Inspection, Testing and Property Assessment
- Specifications for Building Maintenance and Repairs
- Construction Budgets and Cost Estimating
- Construction Management
- Quality Assurance Plans and Inspections



# 1. INTRODUCTION

# Introduction

- Presenter Information
- Program Introduction
- Program Outline
- Learning Objectives







# Pete Fowler

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Read about industry impacts on our blog at [www.petefowler.com](http://www.petefowler.com)



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Find him on [LinkedIn](#)!



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# Program Introduction

## WHY THIS IS IMPORTANT

- Pete Fowler Construction Services, Inc. has been talking, presenting and writing about construction defects (CD) and CD litigation for a long time.
- In 2011 Pete and Alex presented a program called The Construction Defect Lifecycle. Much has happened since then.
- Pete and Alex are back to present "State of the Construction Defect Industry: What's the Same and What's New



# Program Outline

1. Overview
2. Where Have We Been?
3. What's the Same?
4. What's New?
5. Where Are We Going?
6. How Do We Get There?
7. Conclusion





# Learning Objectives

- Introduction to Construction Defects (CD) and the strange world of CD Litigation.
- Review the history of the CD industry.
- Understand building performance standards, investigation practices, and how they relate to Construction Defects.
- Explore where the industry is headed and how we're going to get there.



## 2. WHERE HAVE WE BEEN?

# Common Construction Defects



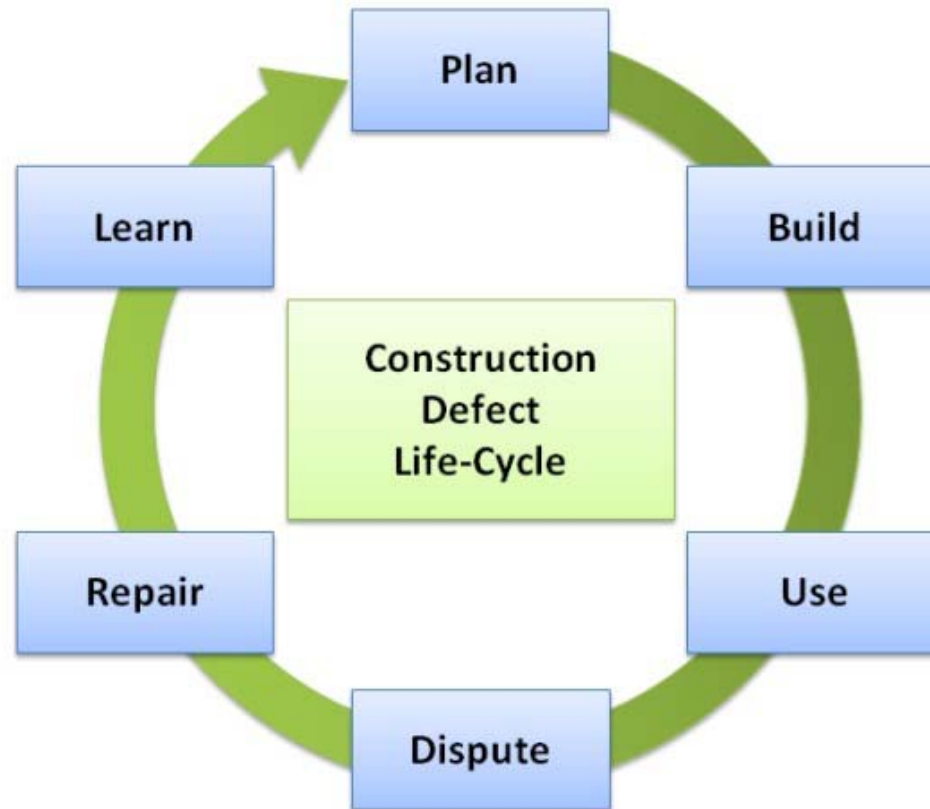
Journal of Light Construction,  
Pub. October 1998



2. WHERE HAVE WE BEEN?

# CD Lifecycle

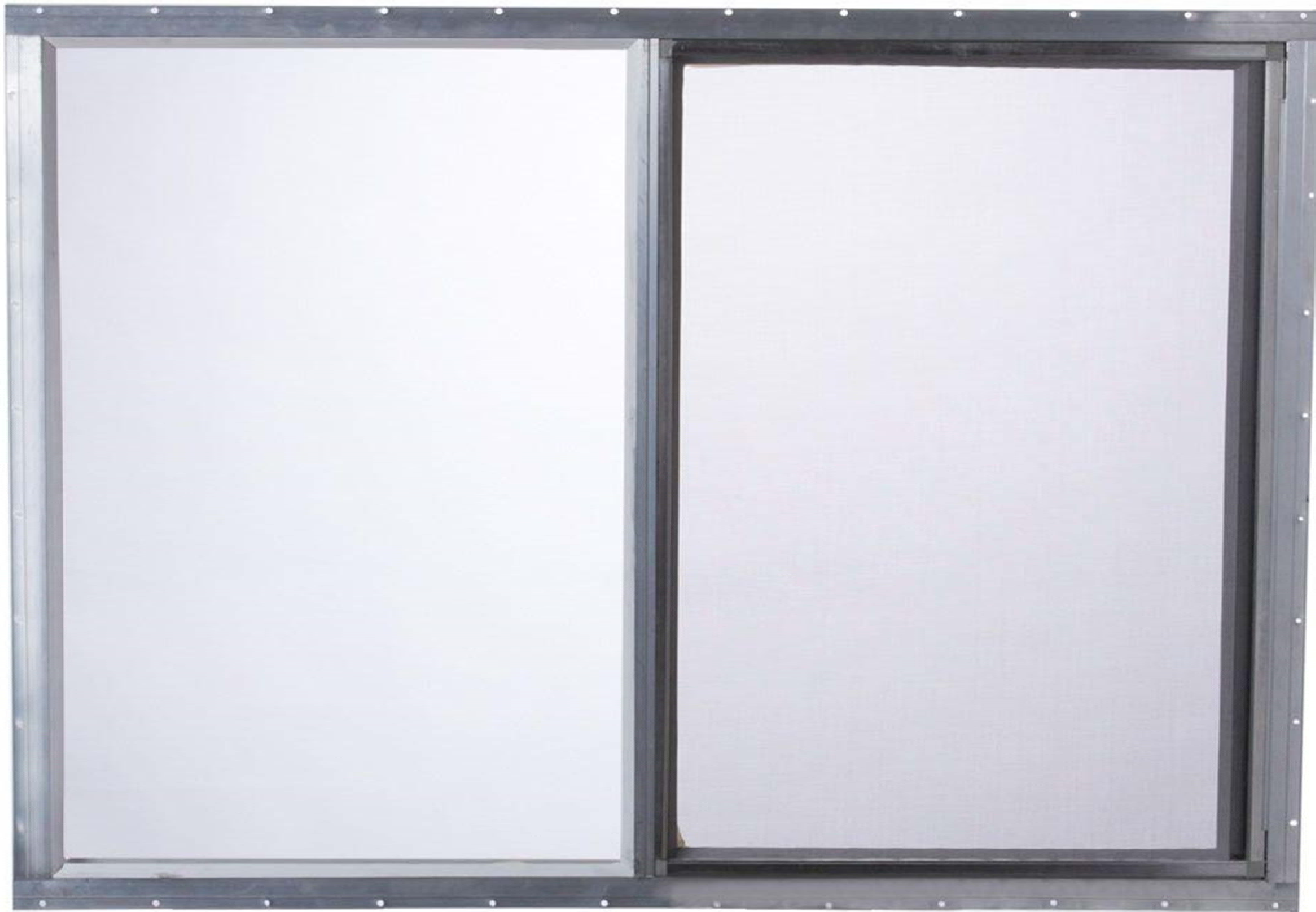
- Plan
- Build
- Use
- Dispute
- Repair
- Learn





2. WHERE HAVE WE BEEN?

# Windows



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2. WHERE HAVE WE BEEN?

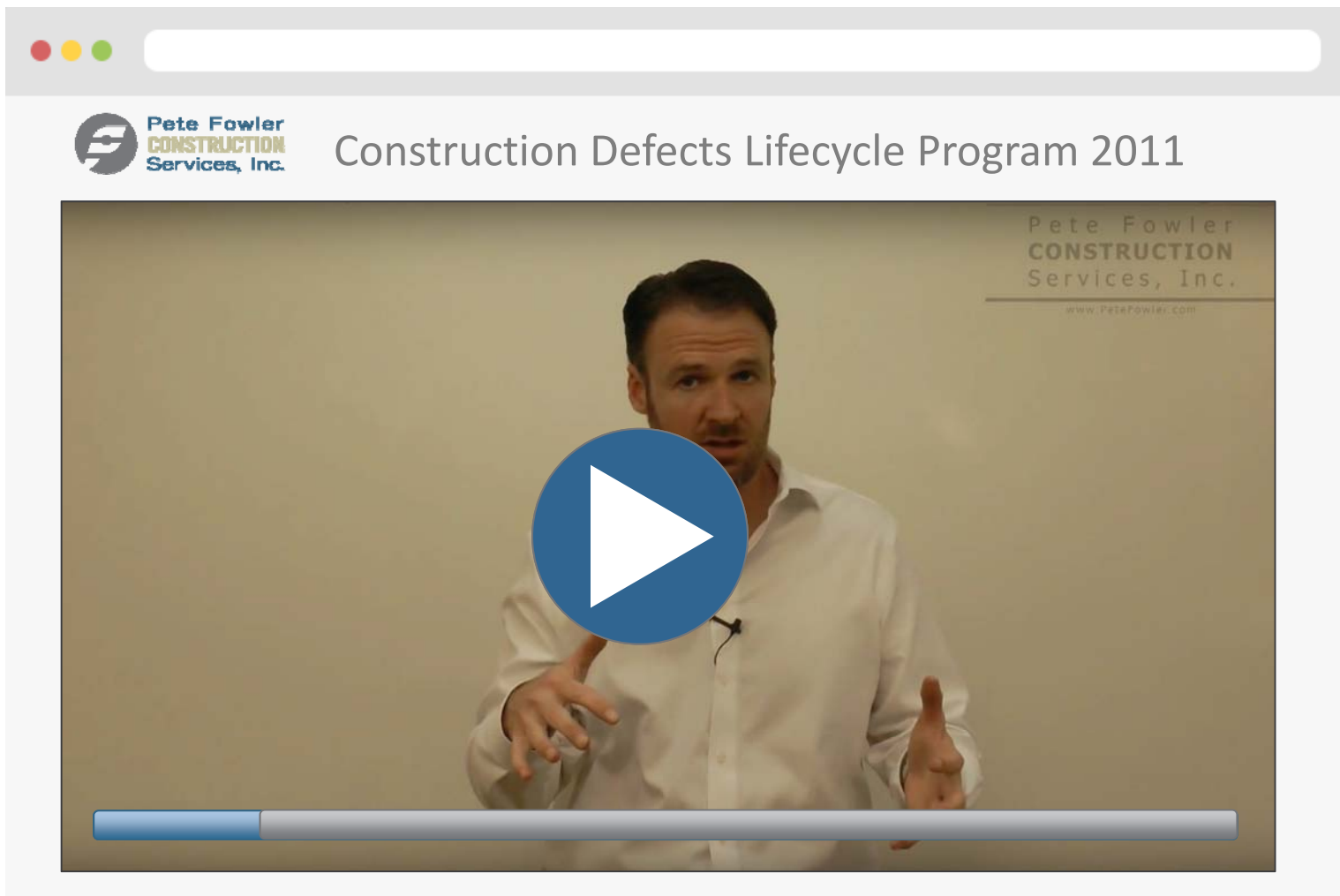
# The Great Recession



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2. WHERE HAVE WE BEEN?

# CD Lifecycle

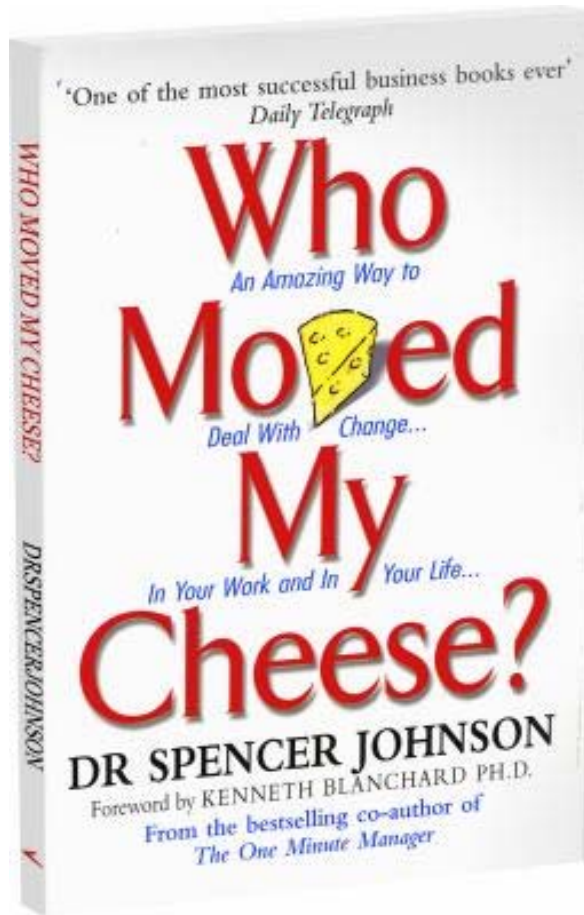


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### 3. WHAT'S THE SAME?

### 3. WHAT'S THE SAME?

# Plaintiff Attorneys



- ✓ Assertive
- ✓ Entrepreneurial



# Windows



- Still a major target
- Windows being installed in exposures where they can't handle it
- Lack of focus of protecting windows in harsh climates
- If there's a plain vanilla CD case, windows are the issue, or at least have been investigated.
- “If you build it, they will try to make it leak”



3. WHAT'S THE SAME?

# Defense Attorneys & Litigation

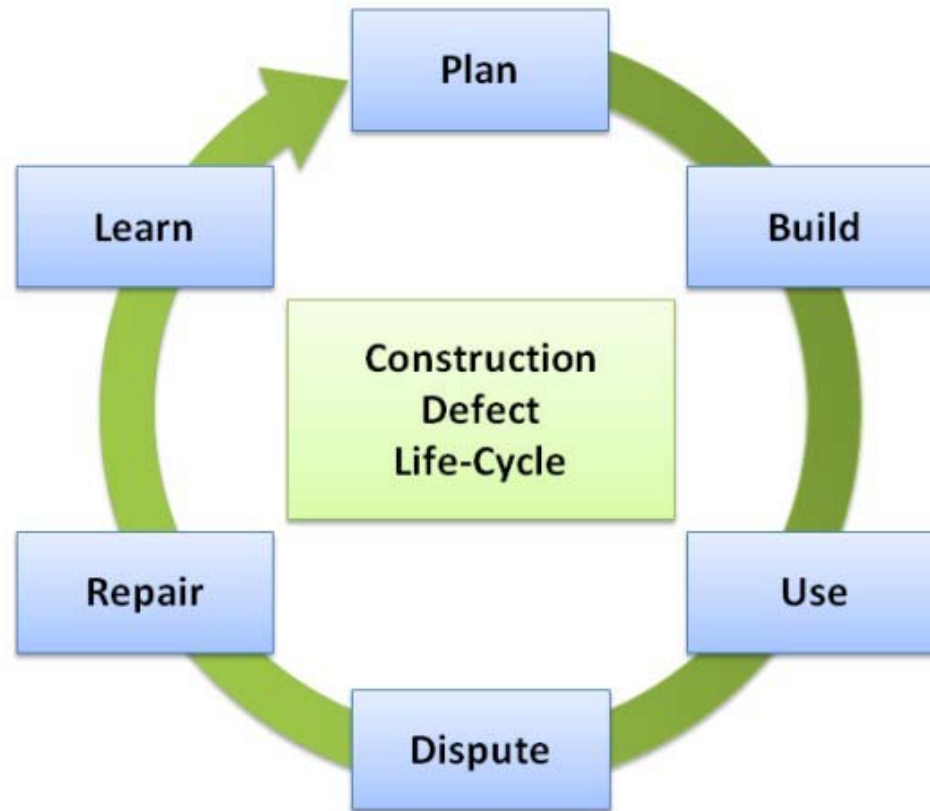


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# Construction Defect Model

Relatively  
Unchanged



# Portfolio Management of Construction Claims

- Claims Management Plan
- Company Level Analysis
- Project Level Analysis
- Vendor Scope-Budget Matrix
- Meeting Minutes



## 4. WHAT'S NEW?

# Drained Walls



People are actually paying attention to the details. Including the authors of the code.

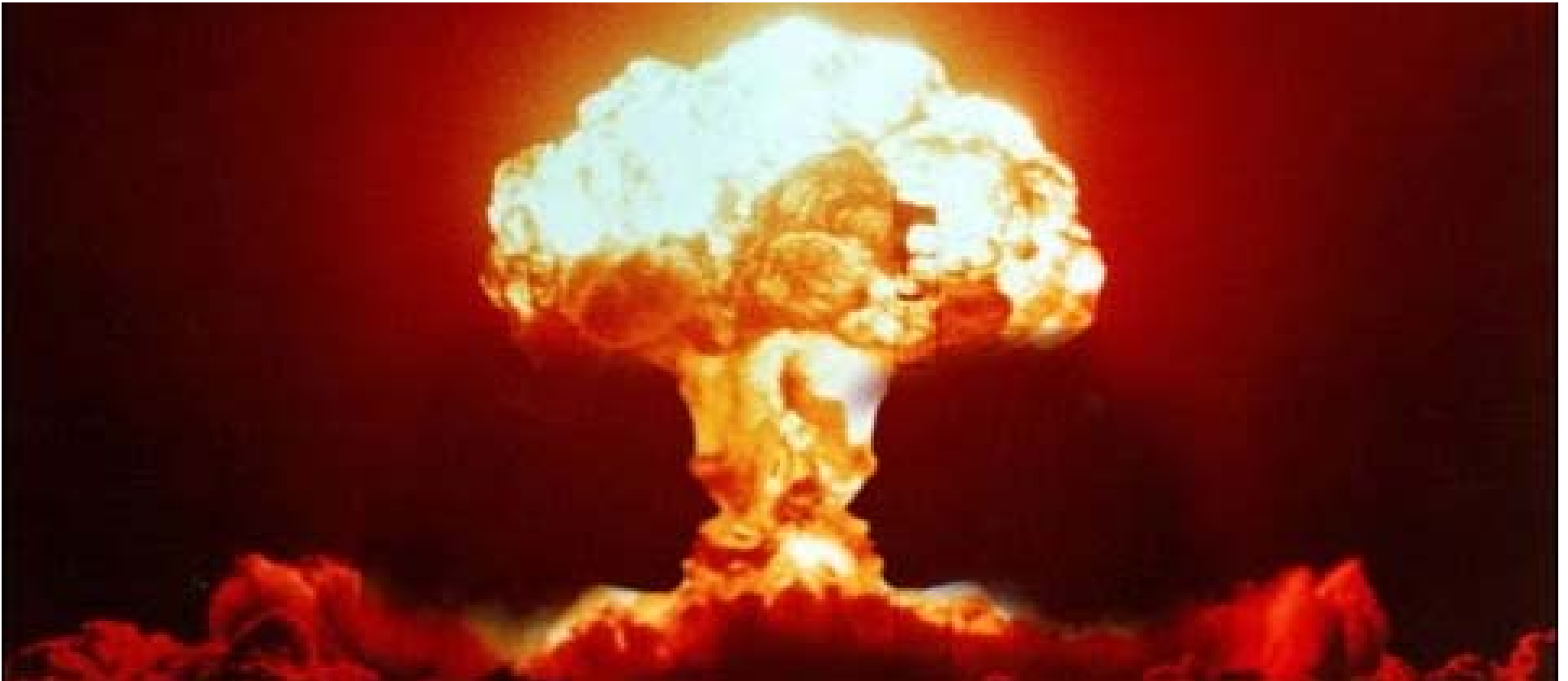


# Wrap Insurance Policies



4. WHAT'S NEW?

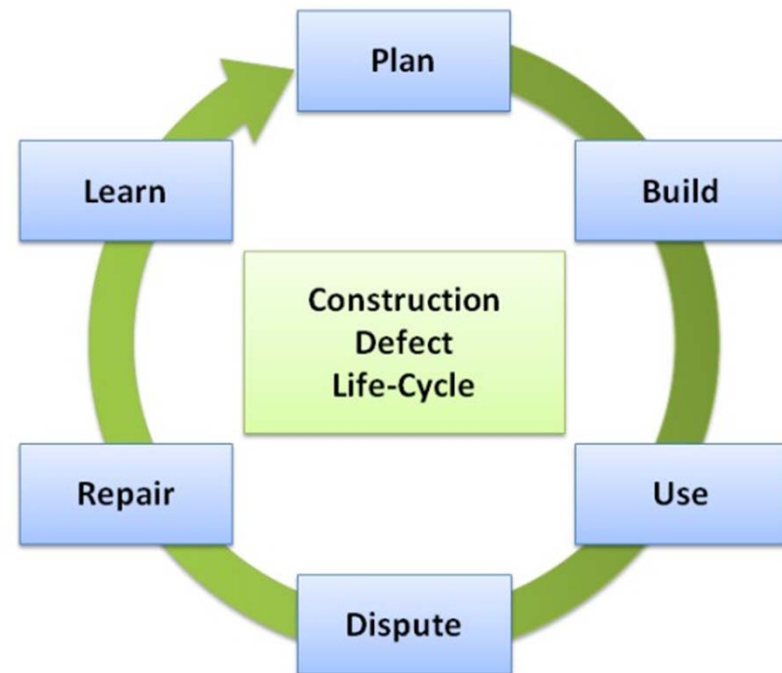
# Building Codes



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# CD Litigation

- Business isn't as big as it was, less litigation in general.
- Different companies have very different strategies for handling litigation - it used to be more transactional.





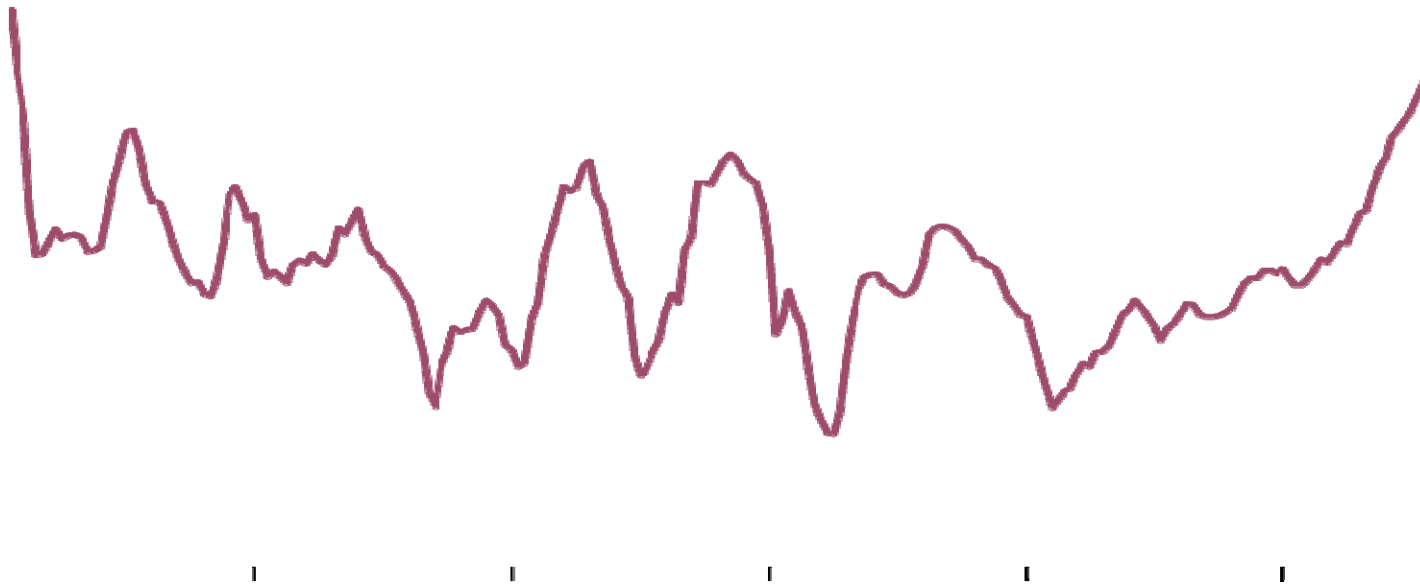
# Design & QC

- Builders are smarter
- Independent QC is pervasive
- There are still dumb-a\$\$es



4. WHAT'S NEW?

# The Economy



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4. WHAT'S NEW?

# Leaking Buildings



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4. WHAT'S NEW?

# Class Action Litigation



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4. WHAT'S NEW?

# Commercial Buildings & Public Work



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# 5. WHERE ARE WE GOING?



## 5. WHERE ARE WE GOING?



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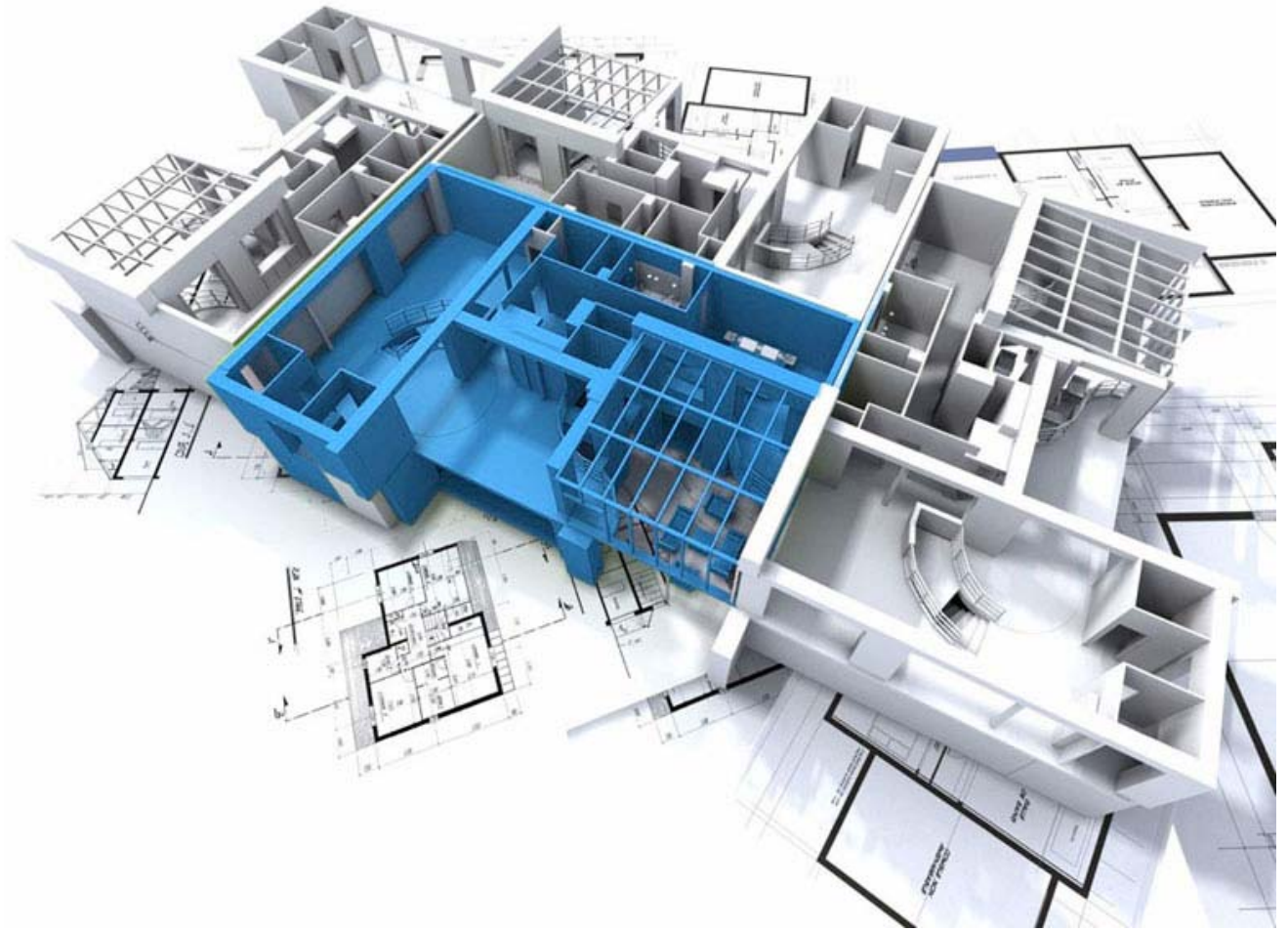
# Better Buildings

Quality is improving  
in all aspects of the  
modern economy



5. WHERE ARE WE GOING?

# Building Information Modeling



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5. WHERE ARE WE GOING?

# Windows

As an industry, where are we going?



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5. WHERE ARE WE GOING?

# Defects



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5. WHERE ARE WE GOING?

# Labor



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## 6. HOW DO WE GET THERE?

6. HOW DO WE GET THERE?

# ABC's of Risk Management



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6. HOW DO WE GET THERE?

# Continuous Improvement



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6. HOW DO WE GET THERE?

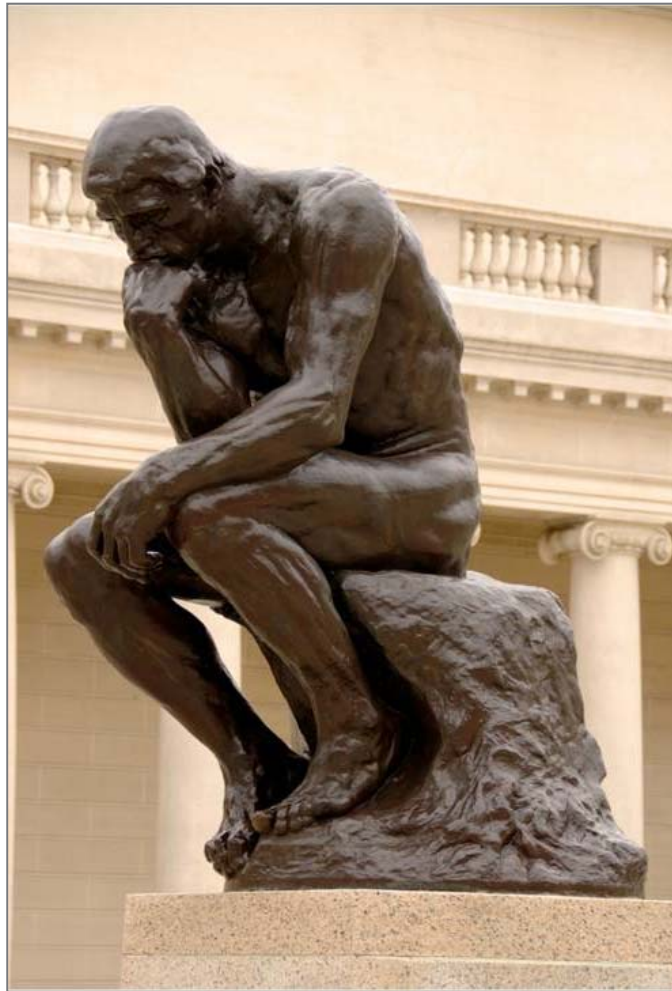
# Building Industry



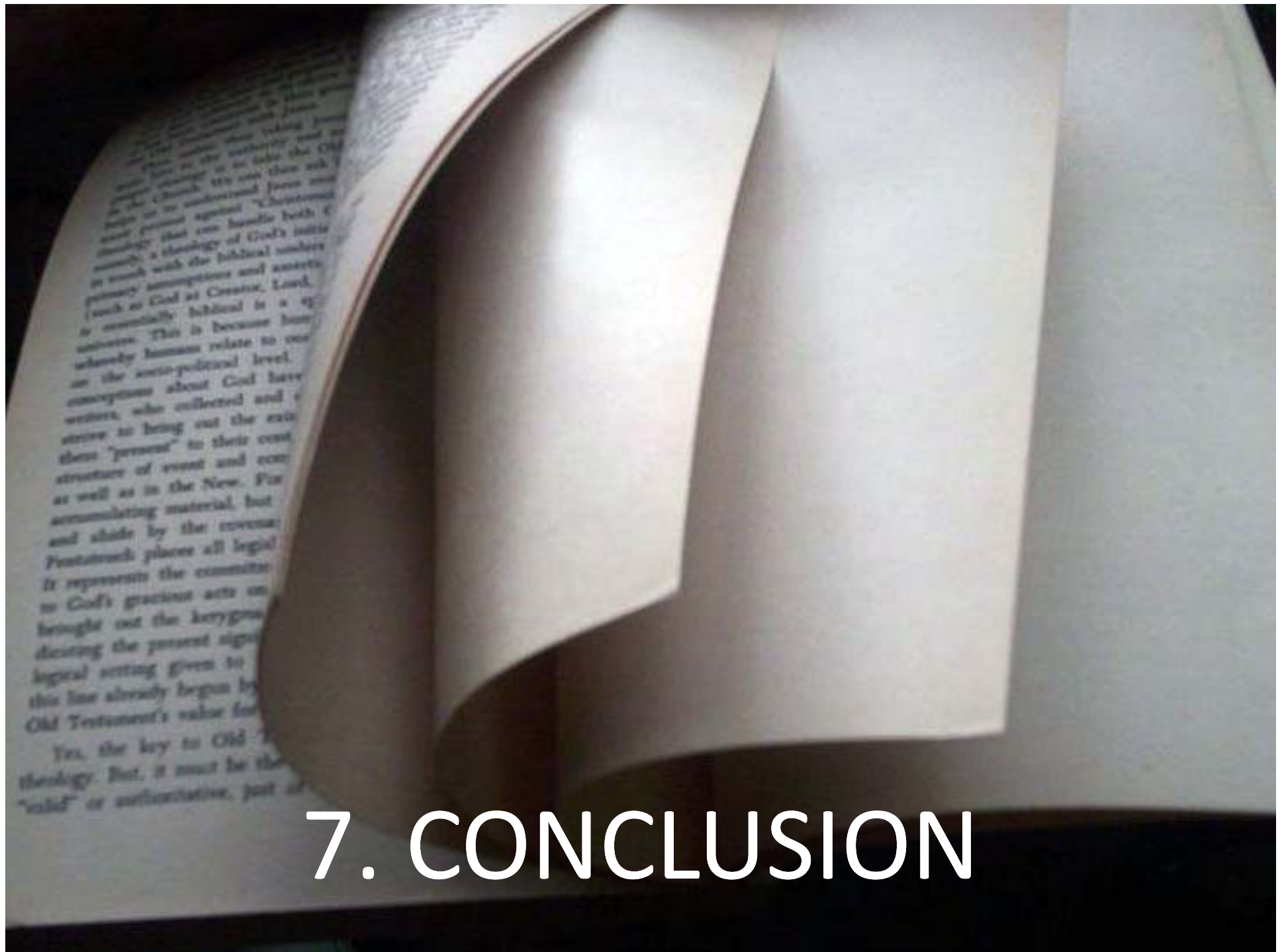
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6. PRESENTING

# Deep Thoughts



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## 7. CONCLUSION

# Conclusion

- Learning Objectives
- Program Outline
- Back-Up Materials
- Q & A



# Learning Objectives

- Introduction to Construction Defects (CD) and the strange world of CD Litigation.
- Review the history of the CD industry.
- Understand building performance standards, investigation practices, and how they relate to Construction Defects.
- Explore where the industry is headed and how we're going to get there.





# Program Outline

1. Introduction
2. Building Basics
3. Inspection
4. Testing
5. Monetizing
6. Presenting
7. Conclusion

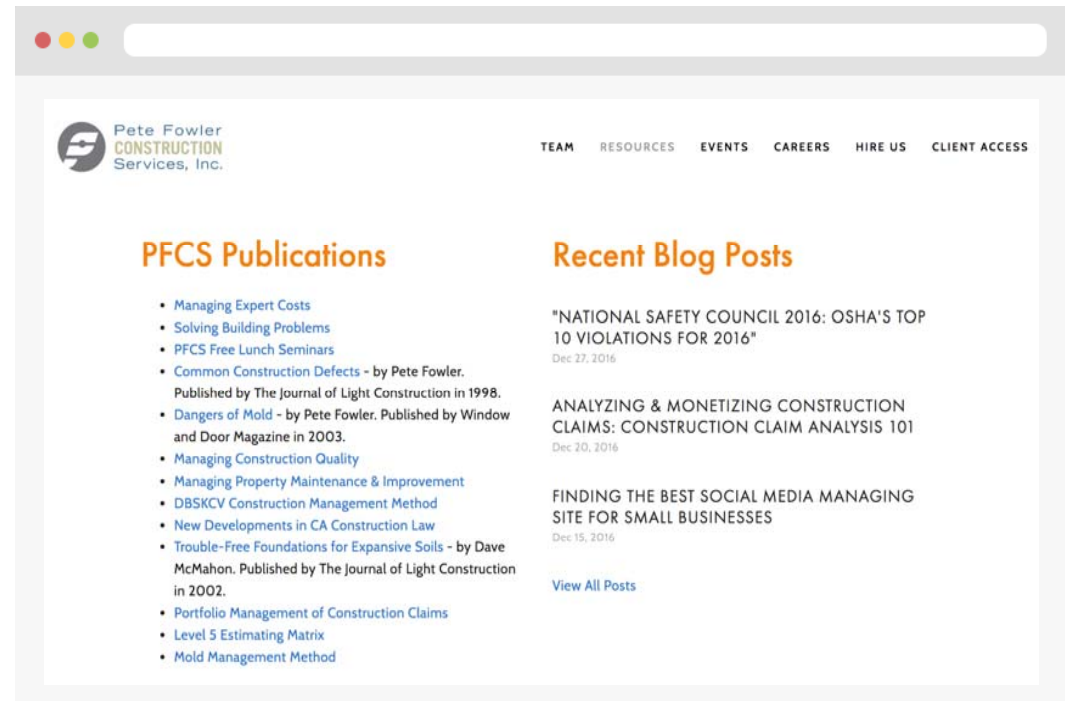




## 7. CONCLUSION

# Backup Materials

1. CD Lifecycle 2011
2. Portfolio Management



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**Contracting 101**  
Tuesday, February 14<sup>th</sup>, 2017



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## 7. CONCLUSION

# Q & A



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