Pete Fowler CONSTRUCTION Services, Inc.

Construction Claims Management

Introduction

To effectively manage construction claims, we have to THINK about them. Claims are complex, and to effectively think about anything complex we have to structure the data, turn it into usable information, and allow patterns to emerge. If we do this well, we can make smarter decisions.

Our program is a 30,000-foot to rubber-onroad journey through a holistic and practical claim management system using actual case studies.

Learning Objectives

- 1. Introduce a framework for management of claims at the company level.
- 2. Introduce the fundamentals of construction claims decision-making at the project level.
- 3. Review case studies to drive home the point.
- 4. Discuss possible next actions. What my friends call "The Monday Morning Action Plan."

Originally Delivered September 2012

Program Outline

- 1. Program Introduction
- 2. Construction Claims
- 3. Claims Management Systems
- 4. Portfolio Management of Construction Claims
- 5. Managing Expert Work & Costs
- 6. Your Next Actions
- 7. Conclusion

Back-Up Materials

- 1. Risk Management Check-List (Section 3)
- 2. Portfolio Management of Construction Claims (Section 4)
- 3. Managing Expert Work and Costs (Section 5)

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Program Contents

- 1. Program Introduction
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 - B. Program Outline
 - C. Learning Objectives
 - D. Who We Are: PFCS
 - E. Who We Are: Audience
 - F. Case Study: Introduction to Otto's Outhouse
- 2. Construction Claims
 - A. Traditional Construction Claims
 - B. Construction Defect Litigation
 - C. General Liability Claims
 - D. Jobsite Accidents
 - E. Case Study
- 3. Claims Management Systems
 - A. Claims Management Strategies
 - B. Commercial Products
 - C. Project Analysis
 - D. Portfolio Analysis
 - E. Future Analysis (Risk Management)
 - F. Case Study
- 4. Portfolio Management of Construction Claims
 - A. Company Level Analysis
 - B. Exposure Analysis at the Project / Claim Level
 - C. Vendor Management
 - D. Executing and Managing Your Plan
 - E. Conclusions & Recommendations
 - F. Case Study
- 5. Managing Expert Work & Costs
 - A. Introduction to Managing Expert Work & Costs
 - B. Project Planning Process
 - C. Project Plan and Budget
 - D. Execution & Management
 - E. Changes & Updates
 - F. Project Status Meetings & Memos
 - G. Managing Multiple Vendors
 - H. Case Study

- 6. Your Next Actions
 - A. Decide which philosophy you are going to apply.
 - B. Make someone in your organization the boss of claims
 - C. Compose a written Claims Management Plan.
 - D. Complete a first-pass Project Level Analysis for each claim. Perfect is the enemy of good at this level.
 - E. Complete a preliminary Company Level Analysis.
 - F. Get manageable Vendor Scopes + Budget documents for each project. Again, perfect is the enemy of good.
 - G. Apply Managing Expert Work and Costs to all new claims.
 - H. Hold periodic meetings led by your boss of claims.
 - I. Make smart decisions.
 - J. Continue to refine.
- 7. Conclusion
 - A. Program Outline
 - B. Learning Objectives
 - C. Back-Up Materials
 - D. Homework
 - E. Contacting Us

Construction Claims Management

Pete Fowler Construction Services, Inc. September 2012

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Construction Claims Management

Pete Fowler CONSTRUCTION Services, Inc.

927 Calle Negocio #G San Clemente, CA 92673 T: 949-240-9971 9320 SW Barbur Blvd #170 Portland, OR 97219 T: 503-246-3744 75 Manhattan Dr #110 Boulder, CO 80303 T: 303-548-3101

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1. Introduction Outline

- A. Program Introduction
- B. Program Outline
- C. Learning Objectives
- D. Who We Are: PFCS
- E. Who We Are: Audience
- F. Case Study: Introduction to Otto's Outhouse

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Construction Claims Management

1. INTRODUCTION

A. Program Introduction (1 of 7)

To effectively manage construction claims, we have to THINK about them. Claims are complex, and to effectively think about anything complex we have to structure the data, turn it into usable information, and allow patterns to emerge. If we do this well, we can make smarter decisions.

Our program is a 30,000-foot to rubber-on-road journey through a holistic and practical claim management system using actual case studies.

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1. INTRODUCTION

A. Program Introduction (2 of 7)

"I have a dream!"



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Construction Claims Management

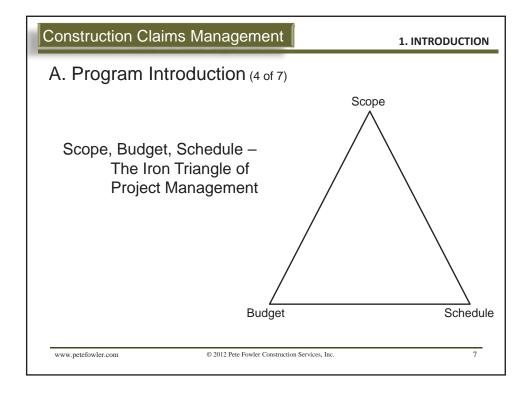
1. INTRODUCTION

A. Program Introduction (3 of 7)

- BACKGROUND: Construction is quite simple: Mostly stacking sticks and stones neatly. Sometimes complex, but not inherently difficult.
- BACKGROUND: Professional (Construction) Project Managers plan
 what will be done, how much it will cost and when it will be done
 (Scope, Budget & Schedule) in advance, and then compare
 performance to plan.
- MY DREAM: <u>Professional Services</u> will someday be managed the same way. I recommend we start soon.

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1. INTRODUCTION

A. Program Introduction (5 of 7)

Scope		Budget	Schedule
1.	Item 1	\$ XXX	Week 1
2.	Item 2	\$ XXX	Week 2
3.	Item 3	\$ XXX	Week 3
4.	Item 4	\$ XXX	Week 3
5.	Item 5	\$ XXX	Week 4
6.	TOTAL	\$ X,XXX	

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1. INTRODUCTION

A. Program Introduction (6 of 7)

Scope		Budget	Actual	
1.	Item 1	\$ XXX	\$ XXX	
2.	Item 2	\$ XXX	\$ XXX	
3.	Item 3	\$ XXX	\$ XXX	
4.	Item 4	\$ XXX	\$ XXX	
5.	Item 5	\$ XXX	\$ XXX	
6.	TOTAL	\$ X,XXX	\$ X,XXX	

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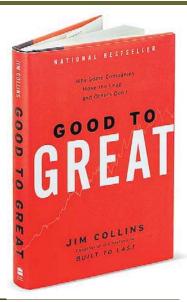
Construction Claims Management

1. INTRODUCTION

A. Program Introduction (7 of 7)

How do we know what the "Best Practices" are?

- 1. The author uses the "twins separated at birth" model of figuring out best practices for companies.
- 2. He uses public companies because they have structured financial and other data reporting requirements that can be compared and analyzed.
- 3. He looked at the data, and then "applied professional judgment."



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1. INTRODUCTION

B. Program Outline

- 1. Program Introduction
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- 3. Claims Management Systems
- 4. Portfolio Management of Construction Claims
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Construction Claims Management

1. INTRODUCTION

C. Learning Objectives

- 1. Introduce a framework for management of claims at the company level.
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- 4. Discuss possible next actions. What my friends call "The Monday Morning Action Plan."

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1. INTRODUCTION

D. Who We Are: PFCS (1 of 4)

"Who the f#\$% is Pete Fowler, and what the f#\$% does he f#\$%ing know...!!"

- Real Quote from Contractor-Client to Attorney

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Construction Claims Management

1. INTRODUCTION

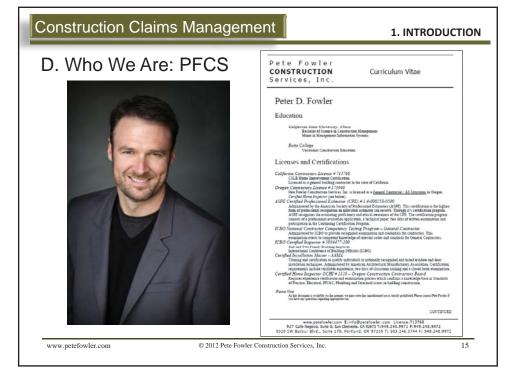
D. Who We Are: PFCS (2 of 4)

I'm brilliant.

It says so on my C.V.

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1. INTRODUCTION

D. Who We Are: PFCS (4 of 4)

Pete Fowler Construction Services, Inc. (PFCS) is a team of consultants with expertise in all phases of building construction. We specialize in creating <u>real</u>, <u>practical solutions</u>.

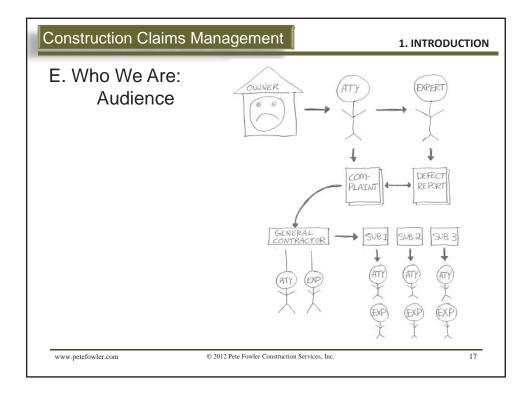
Services:

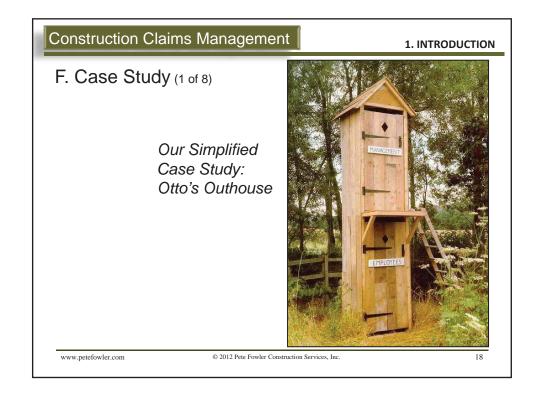
- Cost Estimating
- Construction Management
- Finance & Accounting
- Property Analysis
- Construction Claims Consulting
- Construction Defect Consulting
- Expert Witness Testimony
- Training & Education



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1. INTRODUCTION

F. Case Study: Scope of Work (2 of 8)

- 1. <u>Excavation</u>: Strict conformance with National Outhouse Builders Association (NOBA) *Manual of Practice* for excavation.
- Walls
 - A. Materials: Top quality lumber. Non-corrosive fasteners.
 - B. Workmanship: Strict conformance with NOBA Manual.
- 3. Roof
 - A. Materials: GAF roofing materials. Style selected by Owner.
 - B. Workmanship: Conform with manufacturers instructions.
- 4. Signage: See photograph
- 5. Paint
 - A. Paint Materials: Matched primer and two top coats from a national manufacturer.
 - B. Sealant Materials: Shall conform with ASTM C920
 - Workmanship: Strict conformance with manufacturer's recommendations.

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Construction Claims Management

1. INTRODUCTION

F. Case Study: Final Payment Application (3 of 8)

#	Scope	Value	PMT #1	PMT #2	PMT #3	Total Paid
1	Excavation	250	200	50	0	250
2	Walls *1	300	30	270	0	300
3	Roof	200	0	200	0	200
4	Signage*2	50	0	50	0	50
5	Paint*3	100	0	0	100	100
6	Complete	100	0	0	100	100
7	Total	1,000	230	570	200	1,000
8	-	-	-	-	-	-
9	CO#1: Hardware	10	10	-	-	10
10	CO#2: Delete Signs	-50	-	-50	-	-50
11	CO#3: Paint	60	-	-	60	60
12	CO#4: Landscaping	100	-	-	100	100
13	-	-	-	-	-	-
14	Total	1,120	240	520	360	1,120

Notes: (1.) Allowance of \$30 for hardware. (2.) Allowance of \$40 for signs. (3.) Allowance of \$40 for material. (4.) Exclusion - Ladder

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1. INTRODUCTION

F. Case Study (4 of 8)

Otto Hired A Lawyer!



Our Simplified Case Study: Otto's Outhouse

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Construction Claims Management

1. INTRODUCTION

F. Case Study: Defect List (5 of 8)

- 1. <u>A1010 Foundations</u>: The structure was constructed without a concrete foundation.
- 2. <u>B2012 Exterior Enclosure: Siding & Trim</u>: The nailing of the siding is grossly inadequate.
- 3. <u>B2030 Exterior Doors</u>: The doors leak, causing damage to the interior finishes.
- D 1000 Conveying: The conveying system (ladder) is defective in it's manufacture and the design does not meet minimum ADA requirements.
- 5. <u>D3000 HVAC</u>: The heating system is inadequate to heat the interior to 70 degrees 3 feet above the floor.
- 6. <u>G2050 Landscaping</u>: Half the landscape planting died within the first year and required replacement.

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1. INTRODUCTION

F. Case Study: IIACC Analysis (6 of 8)

- 1. <u>Issue 1</u>: A1010 Foundations The structure was constructed without a concrete foundation.
- Investigation: PFCS has reviewed the available project documents (see Index), visually inspected the project, researched the applicable building standards and corresponded with the building department.
- 3. <u>Analysis</u>: The structure was designed and constructed in conformance with the applicable code at the time of construction, and with the approval of the building department, utilizing a preservative treated (rot resistant) wood foundation technique.
- 4. <u>Conclusion</u>: The structure is performing well in service. No repairs.
- 5. Costs: \$0

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Construction Claims Management

1. INTRODUCTION

F. Case Study: IIACC Analysis (7 of 8)

- 1. <u>Issue 3</u>: B2030 Exterior Doors The doors leak, causing damage to the interior finishes.
- Investigation: PFCS has reviewed project documents, visually inspected, researched building standards, investigated in conformance with ASTM Standards E2128 and observed the Owner's expert test in conformance with ASTM E1105.
- Analysis: While the performance expectation of this structure is not perfection, the E1105 testing not applicable or required for the analysis, the doors allow excessive leakage and cause damage.
- 4. <u>Conclusion</u>: Door weatherization is inadequate, allowing leakage and causing damage. Repairs will include reinstallation of existing doors properly weatherized, and repair of damaged finishes.
- 5. Costs: \$362.80

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Ξ.	Case Stu	dy: Exposure Analy	/SiS (8	of 8)			
#	Code	Description	PLTF	DEF	Best	Likely	Worst
1	A1010 Foundations	The structure was constructed without a concrete foundation.	800.00	-	-	-	800.00
2	B2012 Ext. Enclosure	Siding & Trim: The nailing of the siding is grossly inadequate.	500.00	-	-	250.00	500.00
3	B2030 Exterior Doors	The doors leak, causing damage to the interior finishes.	300.00	362.80	362.80	362.80	300.00
4	D1000 Conveying	The conveying system (ladder) is defective in it's manufacture and does not meet minimum ADA requirements.	4,000.00	-	-		4,000.00
5	D3000 HVAC	The heating system is inadequate to heat the interior to 70 degrees 3 feet above the floor.	1,250.00	-	-		1,250.00
6	G2050 Landscaping	Half the landscape planting died within the first year and required replacement.	500.00	-	-	100.00	500.00
7		Total Construction Costs	7,350.00	362.80	362.80	712.80	7,350.00
8							
9		Attorneys Fees					
10		Expert Fees					
11		Other Costs					
12							
12		Grand Total	7,350.00	362.80	362.80	712.80	7,350.00

2. Construction Claims

- A. Traditional Construction Claims
- B. Construction Defect Litigation
- C. General Liability Claims
- D. Jobsite Accidents
- E. Case Study

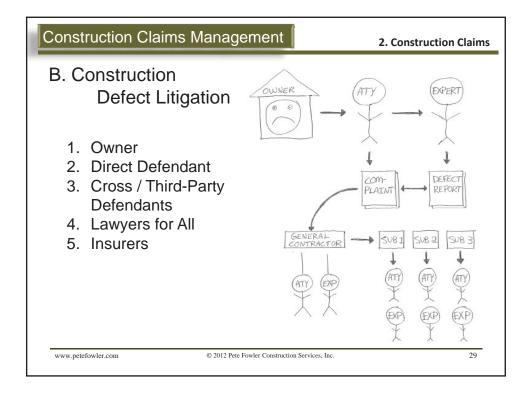


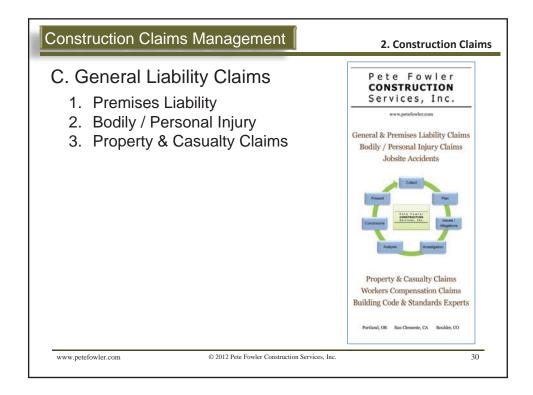
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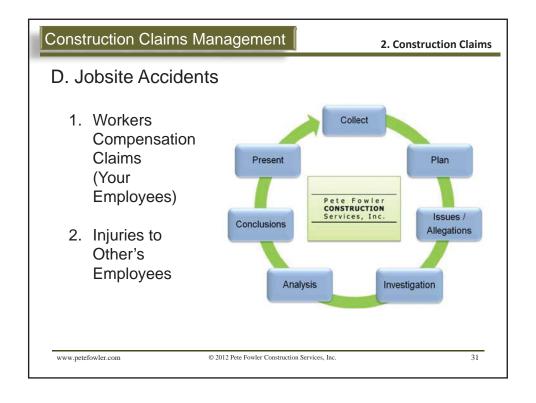
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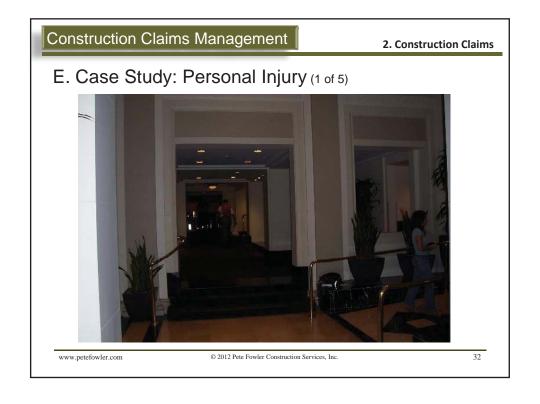












2. Construction Claims

E. Case Study: Personal Injury (2 of 5)

The property in question is the historic hotel in Portland, originally constructed in 1909. There are office spaces available for lease, of which one is occupied by a chiropractic office. There is a staircase comprised of two marble steps with three risers at the western-most foyer of the hotel lobby. The staircase appears to have been remodeled in 1992 by ABC Construction.

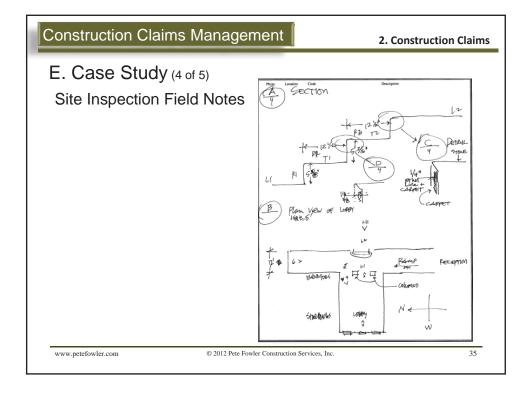
The plaintiff, who worked at the chiropractic office, fell at the stairs on January 14, 2004. She stated that she forgot something after leaving work, turned around to go back to the office, and slipped on the stairs. She admitted to not using the handrails while using the stairs. The plaintiff's complaint asks for relief in the amount of \$683,406 for both medical compensation and lost wages.

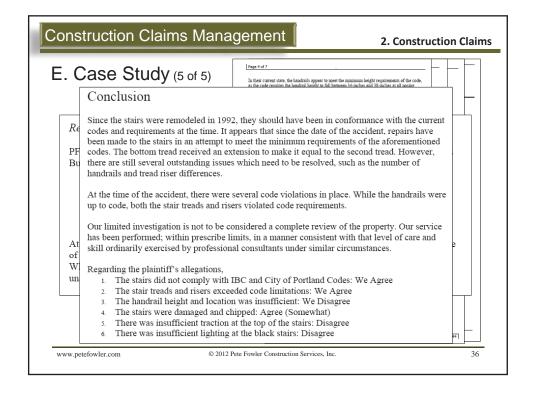
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Construction Claims Management 2. Construction Claims E. Case Study (3 of 5) Current Plan Level Subtotals Scope of Work / Deliverables Hours Level 1: Preliminary Investigation 130.00 A. Images & Information Memo 520.00 B. Document Index & Preliminary Analysis IΡ C. Inspection Documentation (Prepare / Attend / Process) D 1.210.00 D. Meetings, Teleconferences, Correspondence ΙP Level 1 Subtotal 2,250.00 8 Level 2: Analysis A. Photo / Observation Analysis TBC 10 B. Research 4 780.00 C. Opinion Letter TBC 1,950.00 D. Meetings, Teleconferences, Correspondence 680.00 13 4,190.00 14 15 Total Level 1 6,440.00 16 Notes 17 IP = In Process 18 DONE = Deliverable Completed 19 TBC = To Be Completed 20 NI = Not Included 34 www.petefowler.com © 2012 Pete Fowler Construction Services, Inc





3. Claims Management Systems

- A. Claims Management Strategies
- B. Commercial Products
- C. Project Analysis
- D. Portfolio Analysis
- E. Future Analysis (Risk Management)
- F. Case Study

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Construction Claims Management

3. Claims Mgmt. Systems

A. Claims Management Strategies



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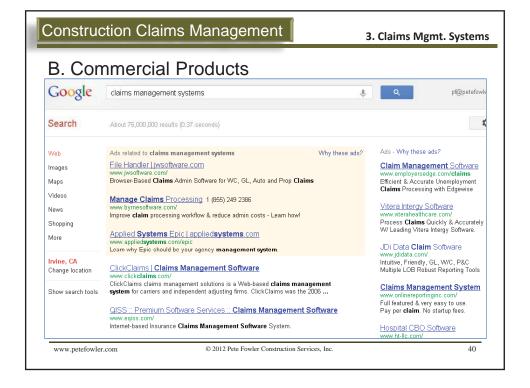
3. Claims Mgmt. Systems

A. Claims Management Strategies

- 1. Head-In-Sand: Delegation outside the organization = Abdication
- 2. Hope and Prayer: Hope is a strategy. But a bad one.
- 3. Cowboy / Caveman / Swashbuckler: Yee Haw!! Usually O.P.M.
- 4. Project "Piles": Most common.
- 5. Force of Genius: Closely related to Project Piles, only better.
- 6. Project Files: We're getting there :-)
- 7. Project Level Data Structure & Analysis: Yea Baby!!
- 8. Portfolio Level Analysis & Analysis: The Promised Land.

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3. Claims Mgmt. Systems

C. Project Analysis

- 1. The Battle: Is this project the war? Or a battle in a larger war?
- 2. Issue-By-Issue Analysis: Get them all in one place.
- 3. IIACC: Issue. Investigation. Analysis. Conclusions. Costs.
- 4. 14 Questions: See Analyzing Construction Defects

		Best Case	Most Likely	Worst Case
1.	Issue 1	\$	\$	\$
2.	Issue 2	\$	\$	\$
3.	Issue 3	\$	\$	\$
4.	SUB	\$	\$	\$
5.	Other	\$	\$	\$
6.	TOTAL	\$	\$	\$

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Construction Claims Management

3. Claims Mgmt. Systems

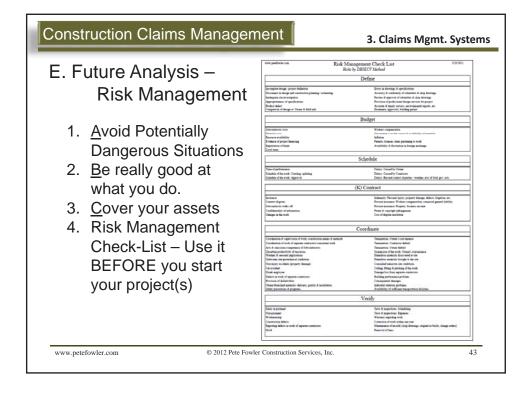
D. Portfolio Analysis

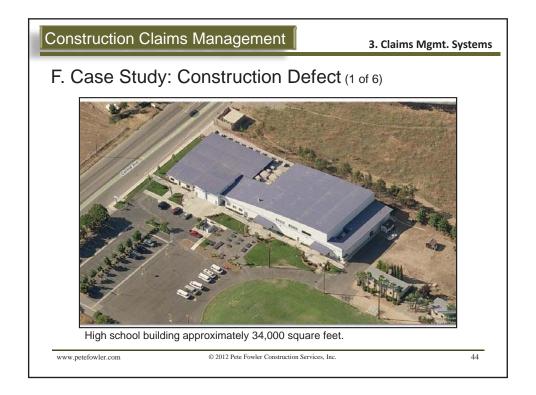
- 1. The Larger War
- 2. Claim-By-Claim Analysis
- 3. How do they relate?

		Best Case	Most Likely	Worst Case
1.	Claim 1	\$	\$	\$
2.	Claim 2	\$	\$	\$
3.	Claim 3	\$	\$	\$
4.	SUB	\$	\$	\$
5.	Other	\$	\$	\$
6.	TOTAL	\$	\$	\$

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3. Claims Mgmt. Systems

F. Case Study: Construction Defect (2 of 6)

This project involves a high school in Wildomar, CA. The building is a 34,400 square foot slab-on-grade single-story, with a mezzanine, concrete tilt-up constructed in 2001 by design-build contractor XYZ Construction., Inc. Approximately 16,850 square feet of the building is a gymnasium with wood flooring which is located on the right side of the structure.

A concrete subcontractor, entered into a contract for \$350,925.00 with XYZ dated September 11, 2001. The job had a start date of September 17, 2001 with an estimated completion date on or before November 30, 2001. The contract called for concrete subcontractor to provide the concrete, and pour, place and finish the concrete (tilt-up) walls, slabs and foundations, to place all embeds provided by others, to perform sacking and patching as required for a finished product, and to provide joint sealant (caulking).

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Construction Claims Management 3. Claims Mgmt. Systems Cross-Defendant Case Project Plan F. Case Study: Construction Defect (3 of 6) Current Plan Scope of Work / Deliverables Level 1: Preliminary Investigation D 130.00 A. Images & Information Memo B. Document Index / Preliminary Analysis IΡ \$ 680.00 C. Inspection Documentation (prepare, attend, process) TBC 15 \$ 2,925.00 D. Meetings / Teleconferences / Correspondence IΡ 780.00 Subtotal Level 1 \$ 4,515.00 Level 2: Analysis A. Photo Analysis \$ 680.00 B. Continued Document Review & Analysis TBC \$ 1,360.00 10 C. Scope of Work Summary TBC 340.00 16 D. Issues Summary Analysis TBC \$ 2,720.00 Subtotal Level 2 \$ 5.100.00 15 Levels 3: Detailed Analysis - To be determined 16 Not included \$ 9,615.00 Totals 54

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