



# NATIONAL CONSTRUCTION DEFECT CONFERENCE



The Roosevelt New Orleans | November 14-15, 2024

## Construction Defect Best Practices



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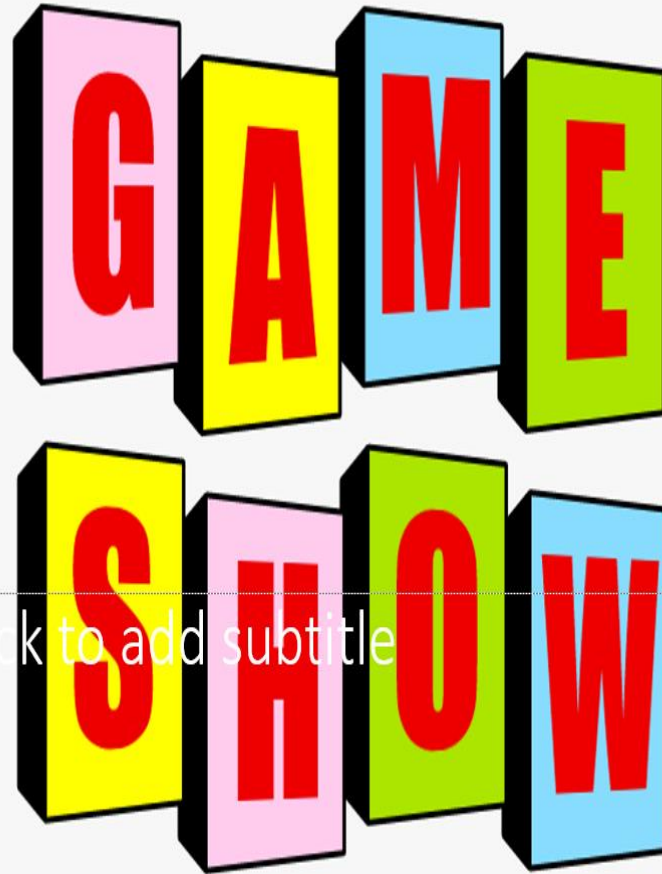


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# CONSTRUCTION DEFECT BEST PRACTICES

## GAME SHOW EDITION

November 14, 2024  
3:30 PM – 4:30 PM



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**MEET YOUR  
CONTESTANTS**

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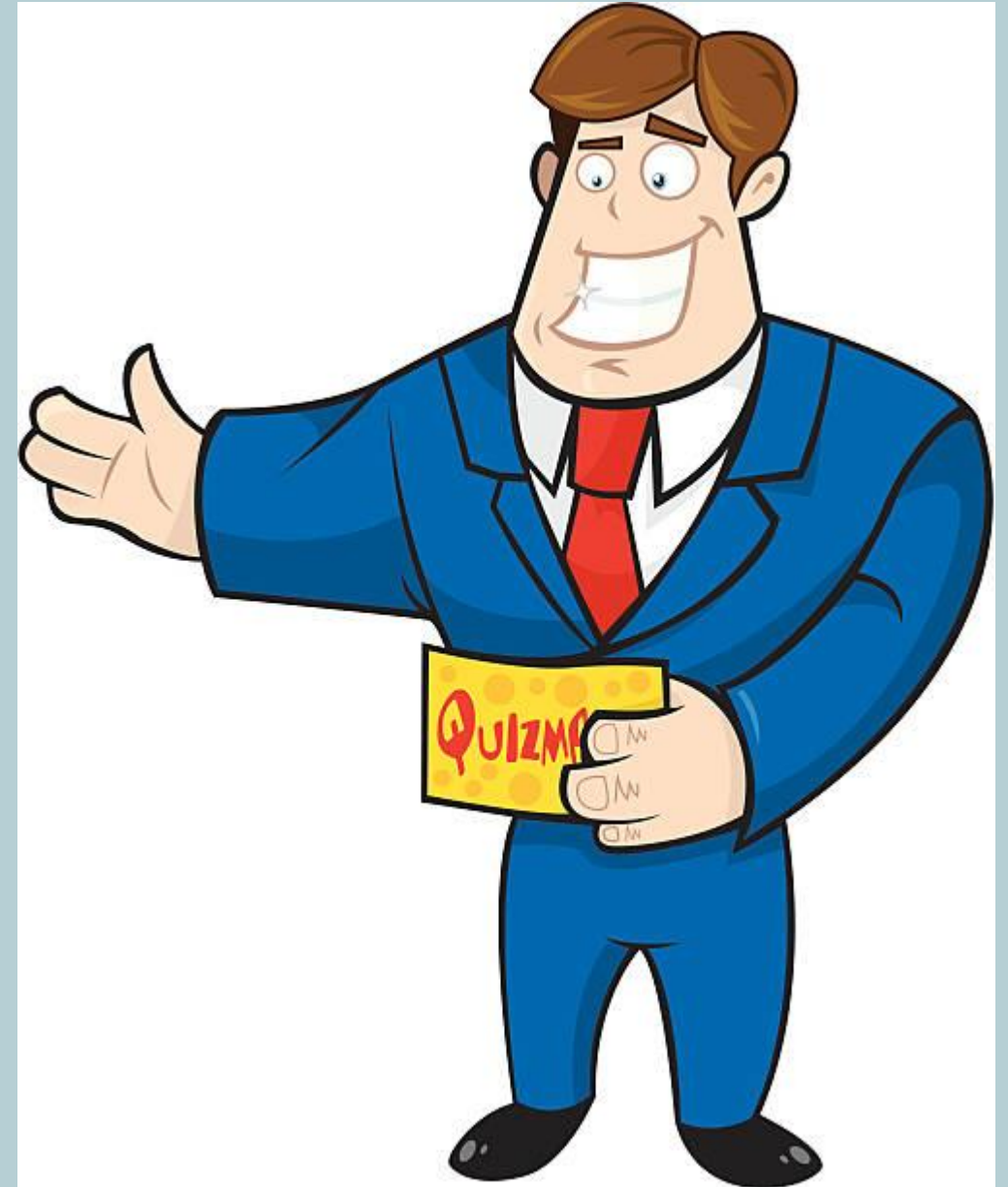
**A. Paloma Ramirez, JD,  
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AmTrust Financial Services, Inc.**



**AND NOW  
YOUR HOST**



**Jason Daniel Feld, Esq.**  
**Kahana Feld LLP**



# Disclaimer:

***This Presentation and Discussion Reflects the Personal Views of the Presenters and Do Not Express The Views of Their Respective Firms or Companies***





**THE**  
**TOP TEN**  
**LIST**

**WHAT ARE THE  
TOP 10 “BEST  
PRACTICES” IN  
CONSTRUCTION  
DEFECT CASES?**

## **#1 – COMMUNICATION**

- **Initial Calls with Carrier and Clients**
- **Periodic Reporting**
- **Event Reporting (Before/After Key Event)**
- **Knowing When A Phone Call is Better Than a Report**
- **Compliance with Insurance Carrier Reporting Guidelines**
- **Eliminate Surprise**
- **Manage Client and Carrier Expectations**
- **Initiate “Roundtable” Discussions**



## **#2 – KNOW YOUR SCOPE OF WORK**

- **Critically Review Job File Documents & Payment Records**
- **Create Matrices → Scope of Work, Plaintiff-Homeowner List, Subcontractor Matrix, Insurance Tender Matrix**
- **Conduct Scope of Work Meetings & Share Information to Educate All Defense Parties and Carriers**
- **Maintain BIG Data and Compile Historic Information**
- **Analyze all potential claimed damages and allocate to the potential responsible parties**

## **#3 – RISK TRANSFER**

### **Look for opportunities for Risk Transfer**

- **Your client's insurance, excess, professional liability, other policies**
- **Subcontractor's insurance – AI tenders, defense/indemnity tenders**
- **Other potentially culpable parties – 3<sup>rd</sup> parties, materialmen, product manufacturers, repair contractors, etc.**
- **Defense and Indemnity Risk Transfer**
- **Know your jurisdiction (ex: Anti-Indemnity Statute states)**
- **Tender Immediately and Follow-up religiously**
- **Don't Stop Until You Get A Definitive Answer and Engage Coverage Counsel if Necessary**



## **#4 – Create The Best Team**

- **Hire the Correct Experts**
- **Identify and Periodically Adjust the Scope of Your Expert Retention**
- **Be Flexible and Willing to Change Your Position on Liability and Damages Based Upon Discovery**
- **Use Your Client's Knowledge of the Project and Work with the Client as a Key Member of the Defense Team**

## **#5 – COLLABORATION**

- **Create a Working Relationship With Claims Professionals**
- **Discuss Viable Strategies → Defenses, Risk Transfer Opportunities, Liability Analysis and Settlement**
- **Partners Not Vendors (Defense Counsel & Claims)**
- **Monthly Conferences in addition to Scheduled Reporting & Roundtable w/ Mgmt. as needed**
- **Obtain full insurance picture**

## #6 – DISCOVERY

- **Comprehensive written discovery is critical**
- **Obtain all job file documents, public records, 3<sup>rd</sup> Party, Subcontractors, and materials/suppliers**
- **Obtain all video, photos, site surveillance, QA-QC records, warranty and repair documents, homeowner communication**
- **Use of Case Management Orders, Pre-Trial Orders, Scheduling Orders**
- **Site Inspections and Destructive Testing**



## **#7 – MEDIATION**

- **Look for opportunities for early resolution**
- **Selection of the right mediator for the matter**
- **Analyze insurance coverage prior to mediation and, if necessary, conduct a coverage mediation**
- **Be prepared and fully knowledgeable – and educate others prior to mediation; Continue to provide the key information to counsel and carriers in between mediation sessions**
- **Be Creative**
- **File Dispositive Motions, MSJ, DJ's in advance of mediation so that negotiations can occur prior to the hearing – added leverage**
- **Work collaboratively with counsel and claims to get to the right resolution**
- **Know your Plaintiffs' counsel and educate them prior to mediation – lower expectations (Ex: Non-CD Plaintiffs' counsel)**



## **#8 – BUDGETING & FILE MANAGEMENT**

- **Prepare detailed initial budget**
- **Work with insurance carrier on periodic revisions to budget as case develops, or when case is proceeding to trial/arbitration**
- **Maintain critical records and big data**
- **Be Matrix Heavy and Organized**
- **Collaborate with Insurance Carriers to Fill in Potentially Missing Info**
- **Use Historical Info, Past Projects and Client Database for current litigation**

## **#9 – TRIAL AND ARBITRATION**

- **Be Prepared, Organized and Diligent**
- **Get Out in Front, Start Early and Don't Wait Until Last Minute**
- **Collaborate with Expert Team, Carriers and Client to ensure complete defense**
- **Communicate – Pre-trial/arb. Conferences, Daily Reporting and Summaries, and interim carrier calls to discuss case strategy and approach during the hearing**
- **Use of technology to assist in trial prep and presentation**



## **#10 – RESOLUTION**

- **Review all outstanding issues present in the case including liability, defense/AI and potentially coverage issues that may impact resolution**
- **Be comprehensive to ensure that you are getting your insured completely out of harm's way and out of future harm's way**
- **Know your client's potential exposure**
- **Work collaboratively with the carrier and potentially coverage counsel**



**AND THE WINNER  
IS.....**

**ALL OF THE  
PARTICIPANTS AT  
THE PERRIN CD  
CONFERENCE!!**

**WELL DONE.**

ANY  
QUESTIONS?



## **Please feel free to Contact Us:**

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Thank you

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