



Prudent Records Retention Practices

" I can't properly defend you if I can't prove what you were supposed to do, what you actually did and when you did it."





Questions asked by Plaintiff's counsel about all that neat stuff that was in your contract:

- What were you supposed to do?
- Did you actually do it?
- When did you do it?
- How much did you charge for that?
- Do you have the records to prove that?

Key records retention policies and procedures:

- Shop Drawing Procedures
- Timeliness
- Recording and Retaining a Log
- [See text]

Essential Practices: "What you need to save, how long you need to save it and why."

- Bills - forever
- Contracts - forever
- Certificates of Substantial Completion / Occupancy - forever
- Certificates of Insurance - forever
- Progress Prints and Shop Drawings - forever
- Bid Sets - forever
- As-Built Drawings – forever\
- Shop Drawings - forever
- Why forever?

What can you prove with a bill?

INVOICE

647-444-1234
your@email.com
yourwebsite.com

1 Your Address
City, State, Country
ZIP CODE

Billed To

Client Name
1 Client Address
City, State, Country
ZIP CODE

Invoice Number

000000

Date Of Issue

10/07/14

Invoice Total

\$4520.00

Description	Unit Cost	Qty / Hr Rate	Amount
Your item Name Item description goes here	\$1000	1	1000
Your item Name Item description goes here	\$1000	1	1000
Your item Name Item description goes here	\$1000	1	1000
Your item Name Item description goes here	\$1000	1	1000

Subtotal \$4000.00

Tax \$520.00

Things you can prove with a bill:

- Who your client was (who to sue)
- What you did for them (scope of work)
- When you did it (scheduling)
- When you charged them for what you did
- When you finished your work (time bar defenses)
- When they paid you (or didn't)

What can you prove with a contract?



The most important things.

- Your scope of work
- When you were supposed to start
- When you were supposed to finish
- What information was provided to you to do your work
- Who else was responsible for what else.
- A myriad of contractual defenses

Certificates of Substantial Completion / Occupancy

- Useful to prove when the work was done.
- Useful to prove when the Statute of Limitations began to run on your work
- Useful to prove when the Statute of Repose began to run on your work
- Useful to prove when someone else became responsible for your work

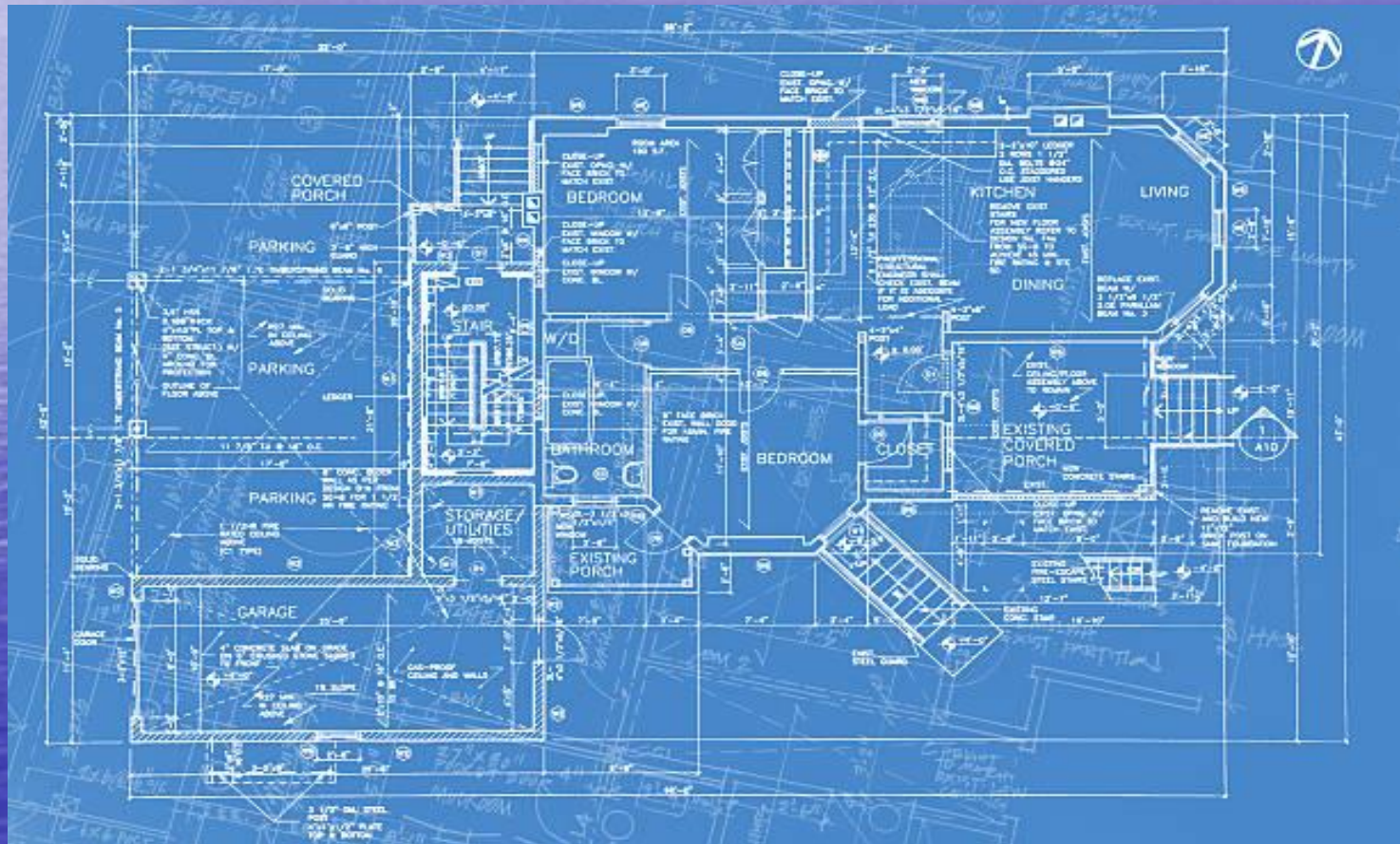
Certificates of Insurance



Who has the “deep pockets”?

- The GC
- The subs
- The CM
- The Owner
- The Material Suppliers
- Your sub-consultants
- You

Progress Prints , Shop Drawings, Bid Sets, As-Builts



Things to prove with these:

- How a project program evolved
- Who designed what
- Did the contractor build what was designed?
- How was what was built different than what was designed?
- When things were changed (title block information)

More things to prove with these:

- What was built
- Scopes of work
- Constructability
- Compliance with Standard of Care
- Code Compliance
- Compliance with Design Intent
- Approval of Changes to Bid Set
- [Resume w text and more detail]

Professional Liability Insurance 101



What is Professional Liability Coverage?

- An insurance policy that provides coverage (expense and indemnity) for claims made against a design professional arising from any act, error or omission on the part of the insured committed *during the course of the rendering professional services* by the insured during the applicable policy period.

How is this different than General Liability Insurance?

- General liability insurance covers you for acts of ordinary negligence but specifically excludes acts of professional negligence from the scope of its coverage.
- If you care about keeping your assets in the event you are ever sued, you need both types of coverage, GL and PL.
- Workers Compensation and other types of coverage

Claims Made vs Occurrence Policies

- Professional Liability Insurance operates on a "claims-made" basis, which means you're only covered if...
- You have coverage when BOTH the alleged incident AND the resulting claim happen during the policy period.
- In other words, you can't buy it after you need it.

Occurrence Coverage

- This is a type of coverage that provides ongoing insurance protection for events that occur during the policy period, even if they are reported after the policy is canceled.
- This is how General Liability Insurance works.
- You don't see this type of coverage offered for PL very frequently.

Things that PL Insurance Does ***NOT*** Cover

- Intentional wrongdoing.
- Illegal acts.
- General liabilities.
- Employee injuries.
- Employment disputes.
- False advertising.
- Property damage.

Prior Acts Coverage

- A feature of a PL policy that covers claims made during the policy period arising out of events that preceded the policy period.
- This feature extends to dates prior to the policy being purchased and bridges the gap between when services are rendered and when claims are filed as a result of those services.
- You might need this if you had no prior coverage or had a gap in coverage.

Tail Coverage

- Coverage purchased to protect yourself from claims made after you are no longer engaged in active practice.
- This covers you for claims that arose but were not made when you had full PL coverage.
- This can be expensive, but your premium will decline over time. Why? Your risk of loss decreases or is statutorily time barred by the Statute of Repose (10 years in NJ).

Who do I buy PL Insurance From?



A PL Insurance Broker



Benefits of using a PL Broker

- You wouldn't ask your General Practitioner to perform your brain surgery.
- PL brokers know your business.
- PL brokers know what coverage you need.
- PL brokers can assist you in submitting an application that gets you the best price.
- PL brokers have relationships with the people (underwriters) who fix your premium

How Much Insurance Do I Need?



How Much?

- What type of work do you do?
- Who do you work for?
- What is the dollar value of your average project?
- Who will use your work product?
- Your broker will recommend an appropriate policy limit and deductible.

How do I choose a deductible?



How much pain can you take?

- A deductible is the amount that you have to pay toward expense and indemnity before your PL coverage kicks in.
- You have to pay it for each claim.
- Assume that you may have at least one to three claims in any given year and plan accordingly.

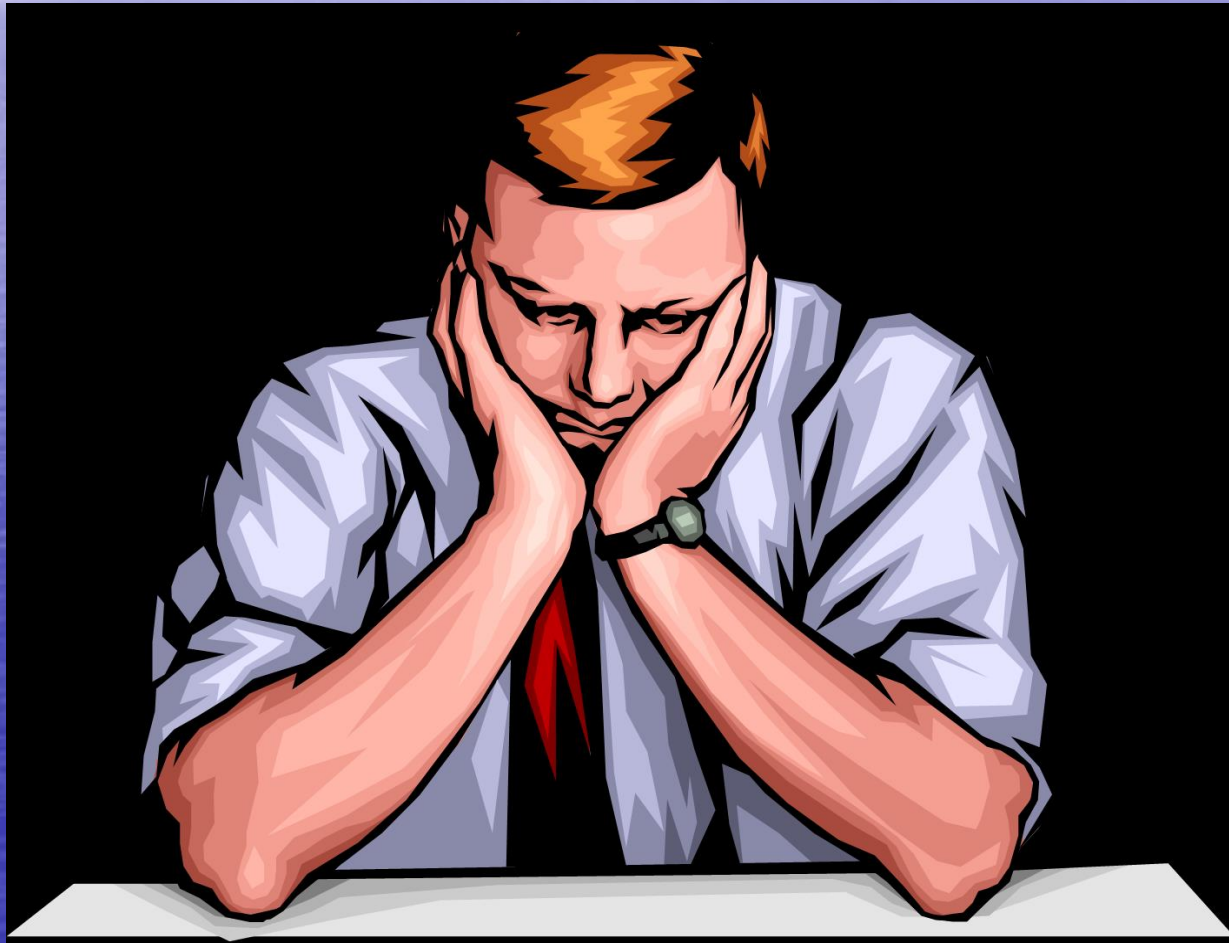
To Settle or Not to Settle, that is
the Question



Loss Ratio

- The proportionate relationship of incurred losses to earned premiums expressed as a percentage. If, for example, a firm pays \$100,000 of premium for PL insurance in a given year, and its insurer pays and reserves \$50,000 in claims, the firm's loss ratio is 50 percent ($\$50,000$ incurred losses/ $\$100,000$ earned premiums).

So when is it best to settle?



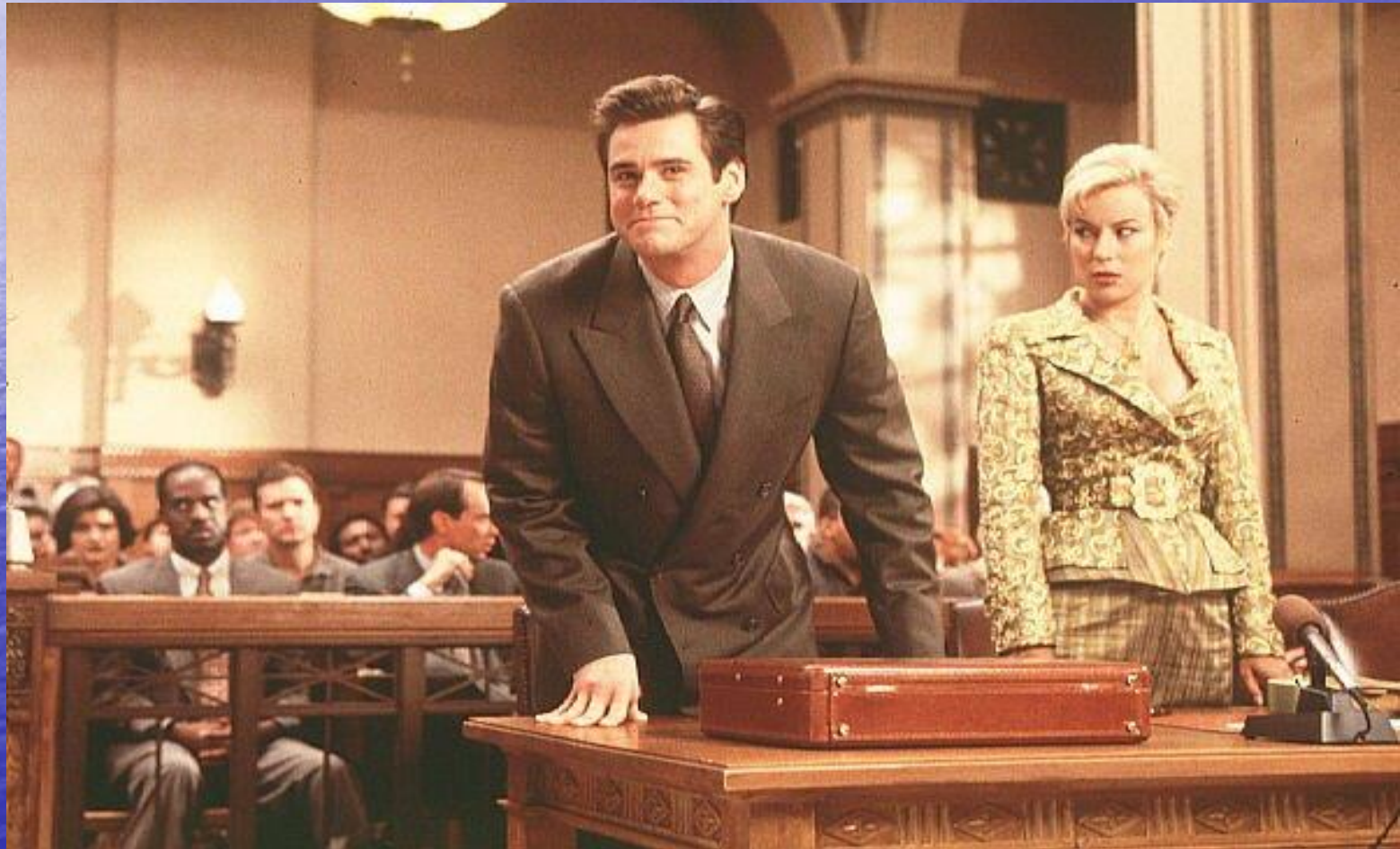
You get sued? Now what?



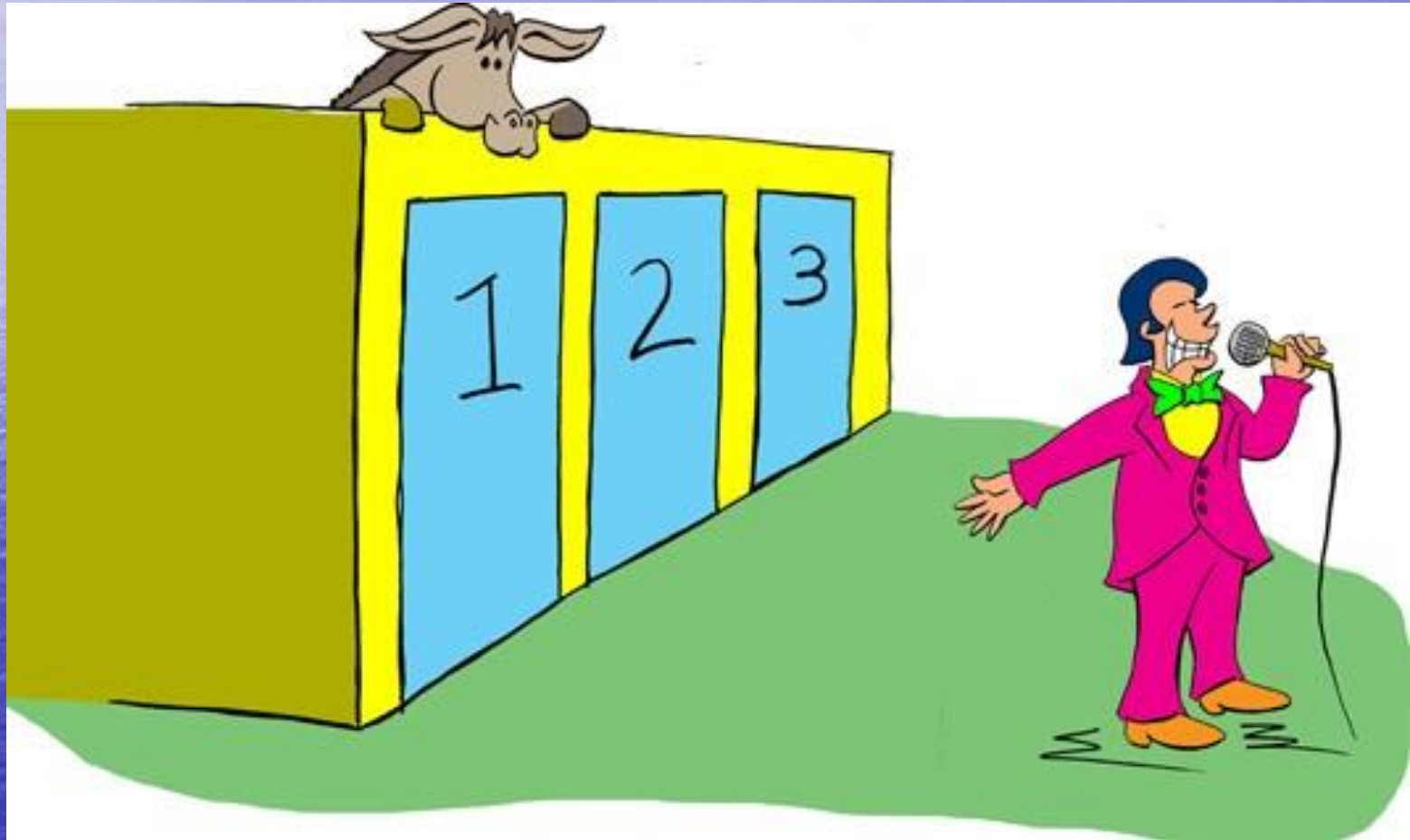
You get sued? Now what?

- Report the claim to your broker right away. Why?
- You are obliged to report the claim under the terms of your policy.
- You may compromise your coverage if you don't.
- The sooner you report the claim the sooner you will receive help.
- You may affect your policy limits

Selecting an Attorney



What are my options?



Your Options:

- House counsel (pros and cons)
- My business lawyer (pros and cons)
- An experienced construction lawyer who knows your business and has tried a complex construction case to a jury verdict multiple times.
- Press the issue. Get the person who will protect your interests the best.