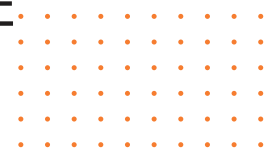




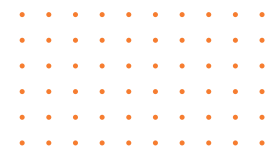
ADR Services, Inc. In-House CLE
Program Presents
April 28, 2025



DE-CONSTRUCTING CONSTRUCTION MEDIATION

AN INSIDE LOOK AT WHAT WORKS AND WHAT DOESN'T

Hon. Jacqueline Connor (Ret.)
John Hanover, Esq.
Ted Levin, P.E., Esq.
Bob Mann, Esq.



SPEAKING TODAY



**Hon. Jacqueline
Connor (Ret.)**



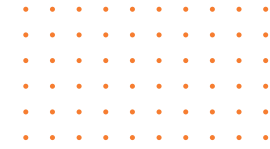
**John
Hanover, Esq.**



**Ted
Levin, P.E., Esq.**



**Bob
Mann, Esq.**



INTRODUCTION

Mediation in construction disputes is complex, often driven by insurance, multiple parties, and credibility.

Today's Session:

Pulling back the curtain on the real mechanics of construction mediation.



WHAT IS YOUR GOAL IN MEDIATION?

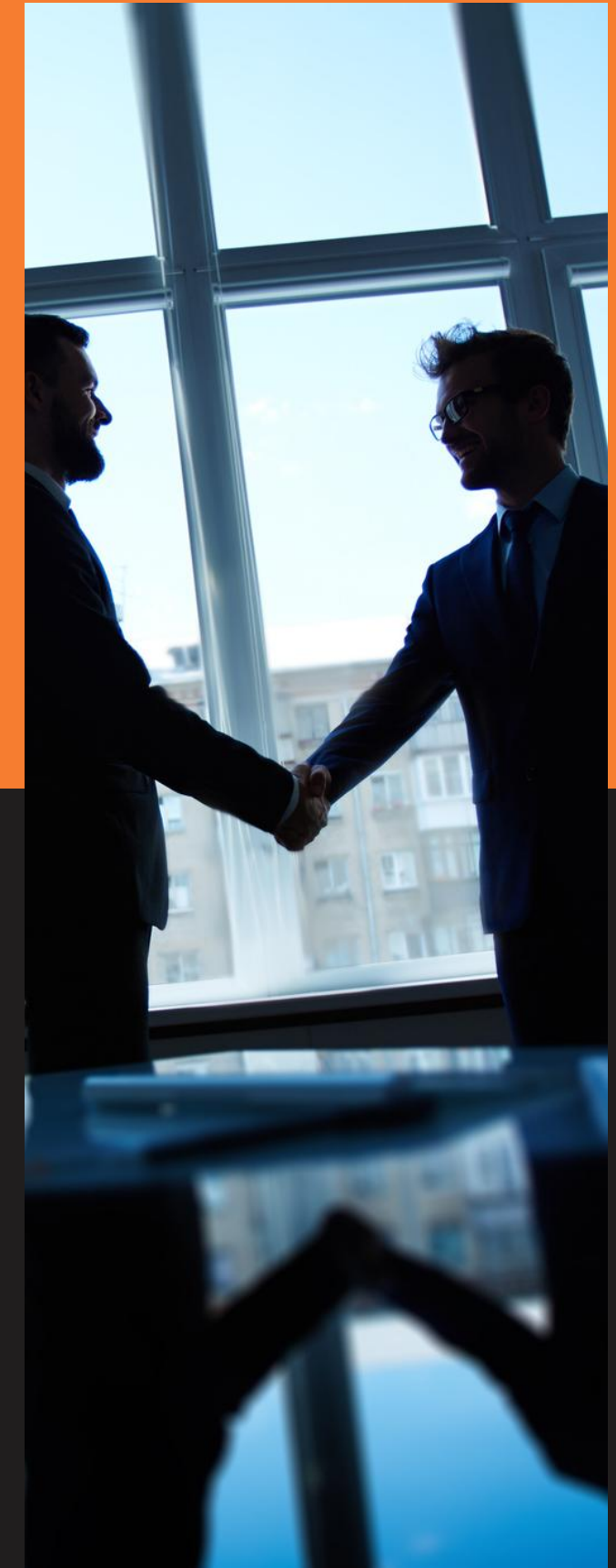
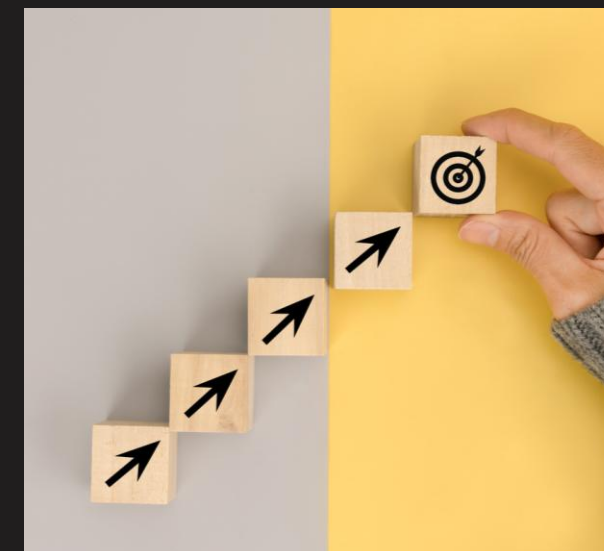
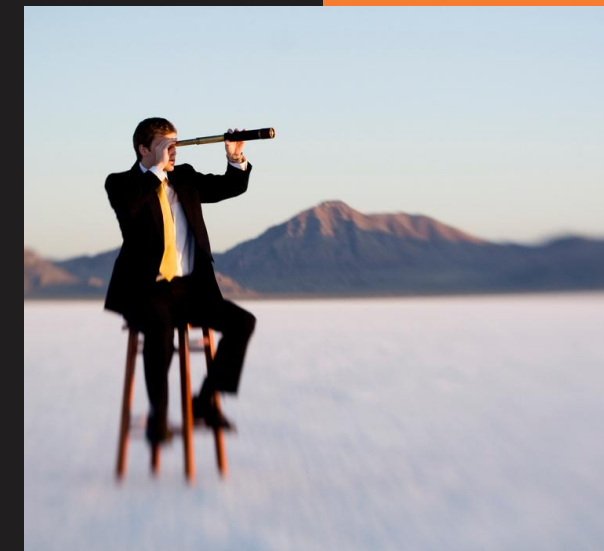
➔ **Define success:** Is it resolution? Issue narrowing? Information exchange?

➔ **Main Goal:** Resolving the Dispute



Ancillary Goals:

- Resetting client expectations
- Uncovering insurance positions
- Preparing for trial



PREPARING TO REACH YOUR GOAL



**Transparency and credibility
are key**



**Share defect lists, cost of
repair, change order reviews
early (60+ days out)**




**Pre-mediation meetings with
experts and mediators can
shape the narrative**

INSURANCE & AUTHORITY DYNAMICS: CURRENT TRENDS




Claims often insurance-driven.




Claims Representatives need time to analyze and secure authority. Claims Adjusters typically have many files and therefore adequate time for preparation is imperative.




Is there an OCIPs/wrap policy?



Understand if any of the parties are underinsured and/or judgment-proof.

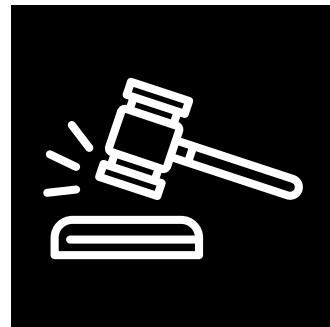


Are there limits on the claims/damages that insurance will or will not pay for?



Setting realistic client expectations. Discuss insurance related issues (such as resultant property damage issues) candidly with your client.

KNOW THE LEGAL TERRAIN



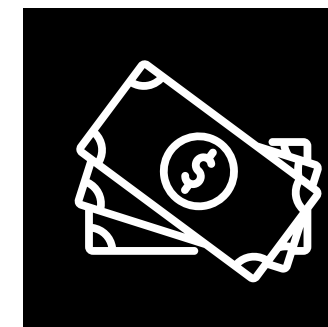
Arbitration or court?



Are bonds involved?



Contractual clauses: indemnity, liquidated damages, attorneys' fees, waivers, caps on liability, waiver of consequential damages

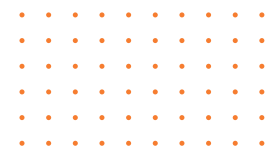


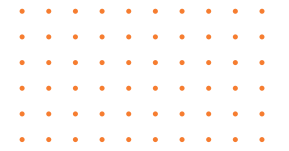
Are there likely post judgment considerations? Interest? Prompt payment? Attorney's Fees?



EXPERTS & THEIR ROLES

- Key expert types: construction defects, delay/disruption, appraisal, forensic accounting
- Consider "hot-tubbing" experts.
- Brief your experts to present clearly, especially on technical issues.
- Role of experts at mediation





SET REASONABLE EXPECTATIONS

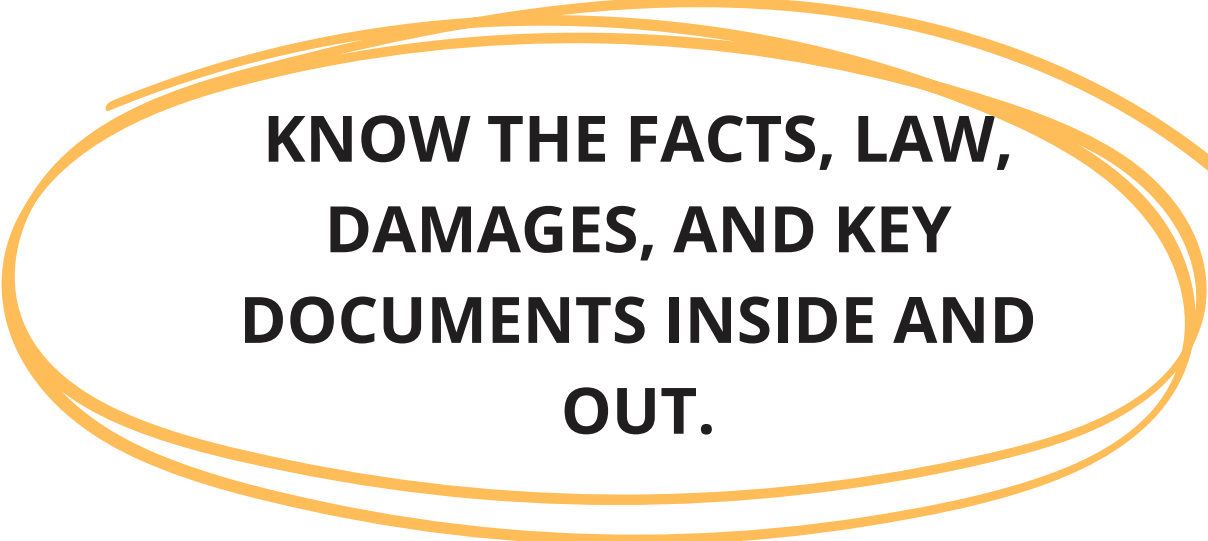
Explain to clients that some claims (e.g., emotional distress, purely defective work with no resultant damages) aren't covered.

Don't overreach on damages.

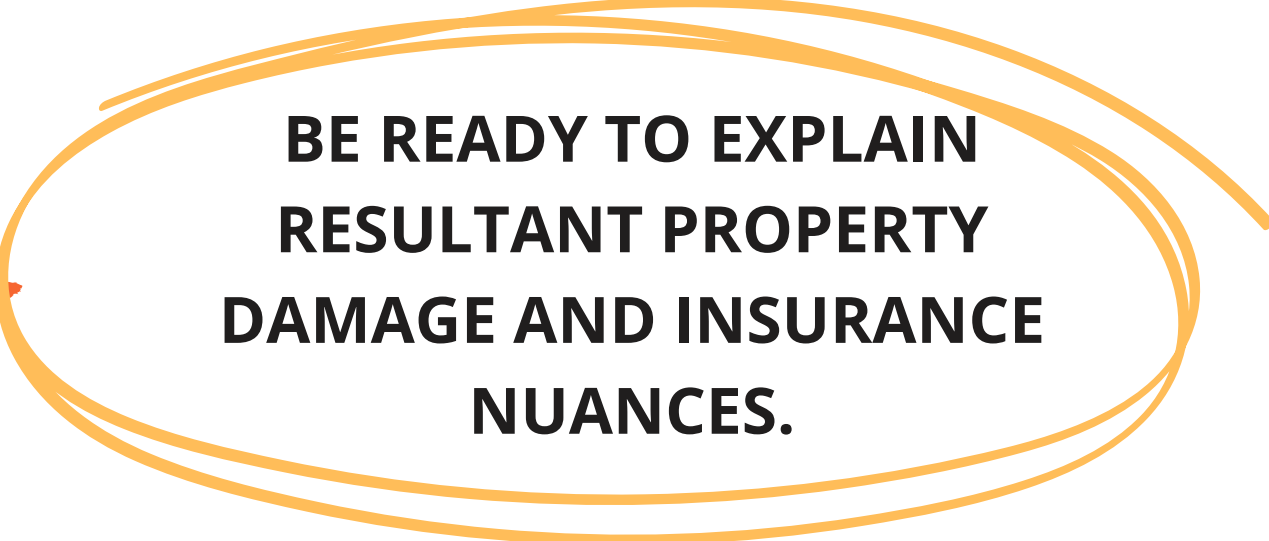

Establish mediator credibility by being reasonable.



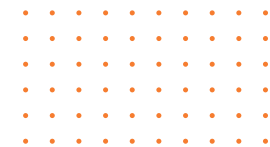
KNOW YOUR CASE & OWN IT



**KNOW THE FACTS, LAW,
DAMAGES, AND KEY
DOCUMENTS INSIDE AND
OUT.**



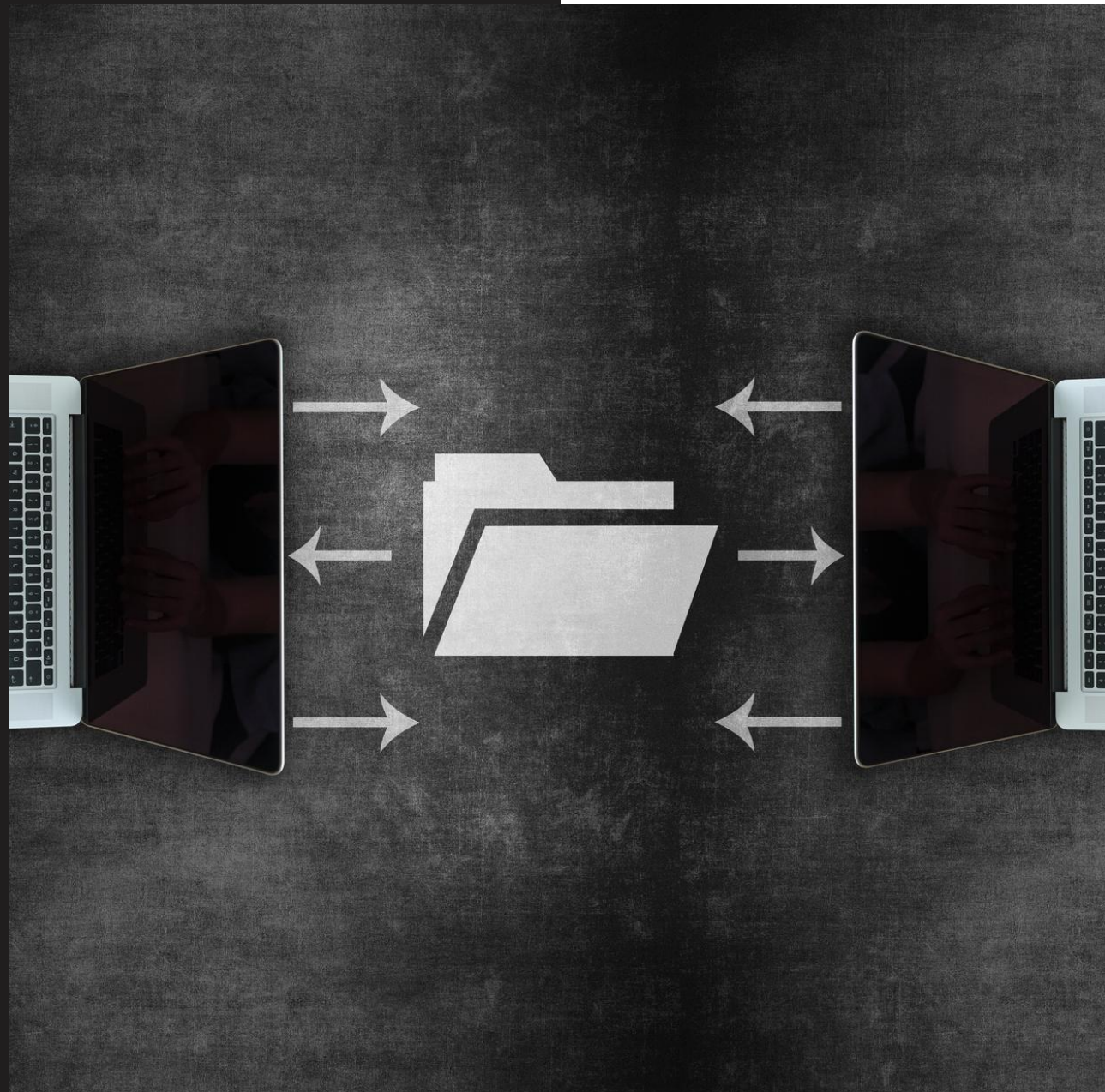
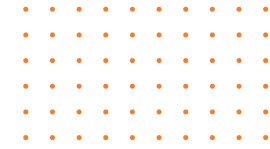
**BE READY TO EXPLAIN
RESULTANT PROPERTY
DAMAGE AND INSURANCE
NUANCES.**



CONCEPT OF MEDIATION IN CONSTRUCTION CASES

- 95% risk analysis, 5% personalities.
- Settlement is a business decision.
- Evaluative vs facilitative approaches—how mediators balance both.





SHARE YOUR BRIEF

Always submit a brief, even if opposing counsel doesn't.

Strike a balance: 3 pages is too little, 15+ may be overkill unless justified.



SOME COMMON TROPES IN CONSTRUCTION MEDIATION

- Delay claims: Both sides point fingers.
- The Blame Game: Contractor v. Design professional v. Owner's rep/construction manager
- Owner perception of contractors



LET'S DISCUSS





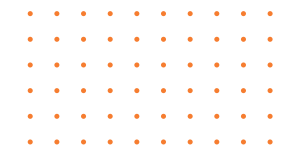
CHANGE ORDERS: A TALE AS OLD AS TIME

Contractor: "Work approved verbally."

Owner: "Read the contract. No written change order, no money."

The clash of law and equity

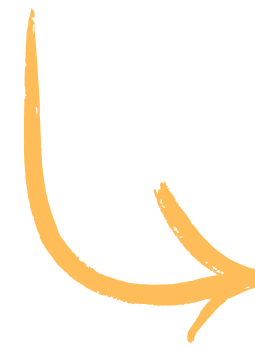
Be prepared to explain notice and waiver issues.



DELAY & LIQUIDATED DAMAGES

LDs are often oversimplified.

Require intensive expert analysis.

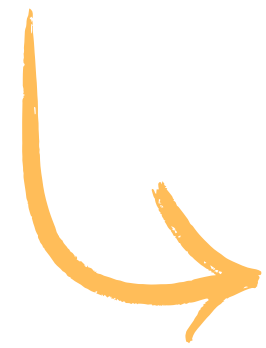


Are LDs exclusive remedy? Are other damages recoverable?

ATTORNEYS' FEES, PROMPT PAY, AND INTEREST

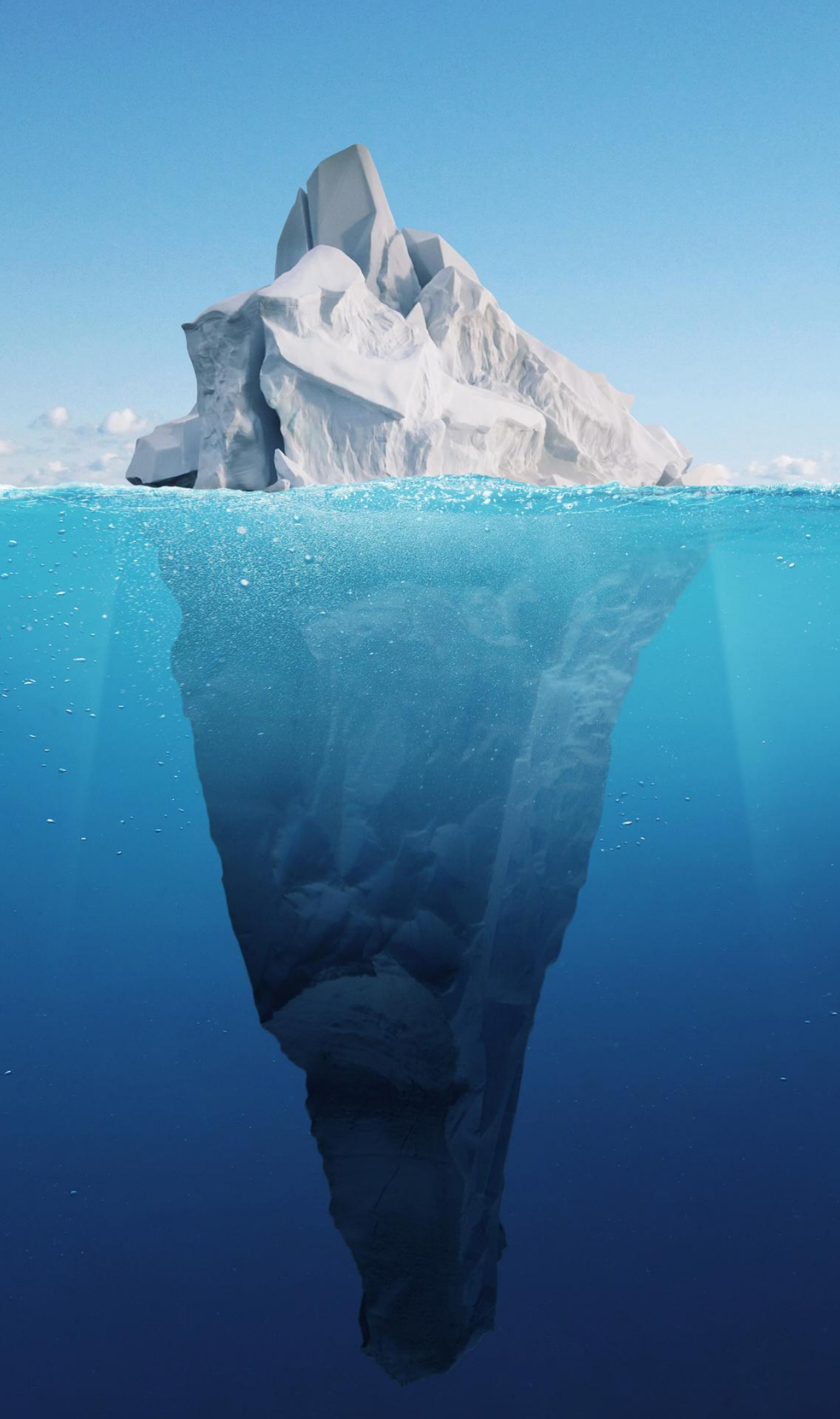
Can your client afford to win?

Consider Prompt Payment statutes and interest recovery.



These factors often drive practical resolution.







OVERSIMPLIFICATION EPIDEMIC

Beware of briefs that ignore complexity.

Support all damage claims.

Don't let coverage counsel show up at 3 PM.



CLOSE-OUT DISPUTES & COUNTERCLAIMS

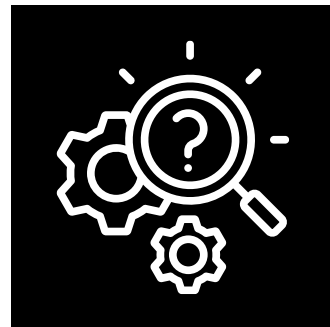
Contractor: Wants payment.

Owner: files defect suit.

Common scenario in public and private projects.

Expect mechanics liens, stop notices, bad product claims, or delay claims.

TAKEAWAYS FOR EFFECTIVE MEDIATION



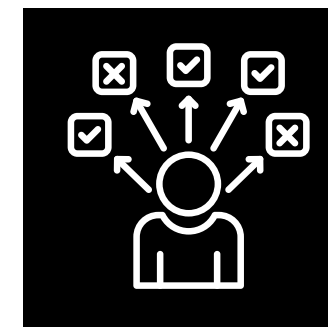
Prepare
thoroughly.



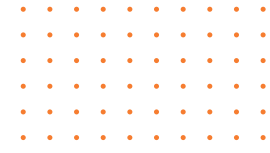
Share information
generously.



Set realistic
expectations.



Help your client
make a sound
business decision.



QUESTIONS?

STAY IN TOUCH

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