

Anatomy of a Surety Claim



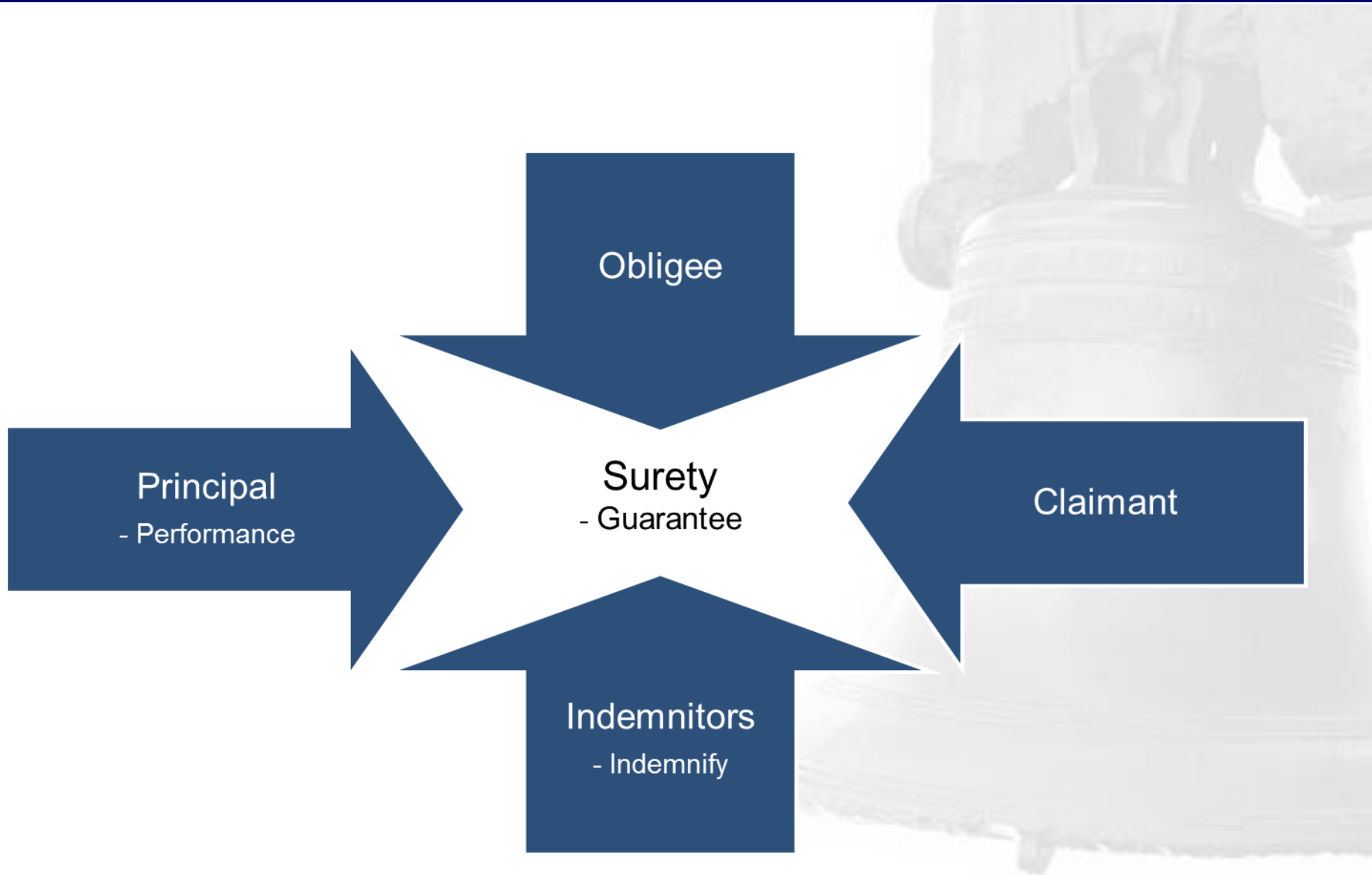
PHILADELPHIA INSURANCE COMPANIES

A Member of the Tokio Marine Group

A day in the life of Claims...



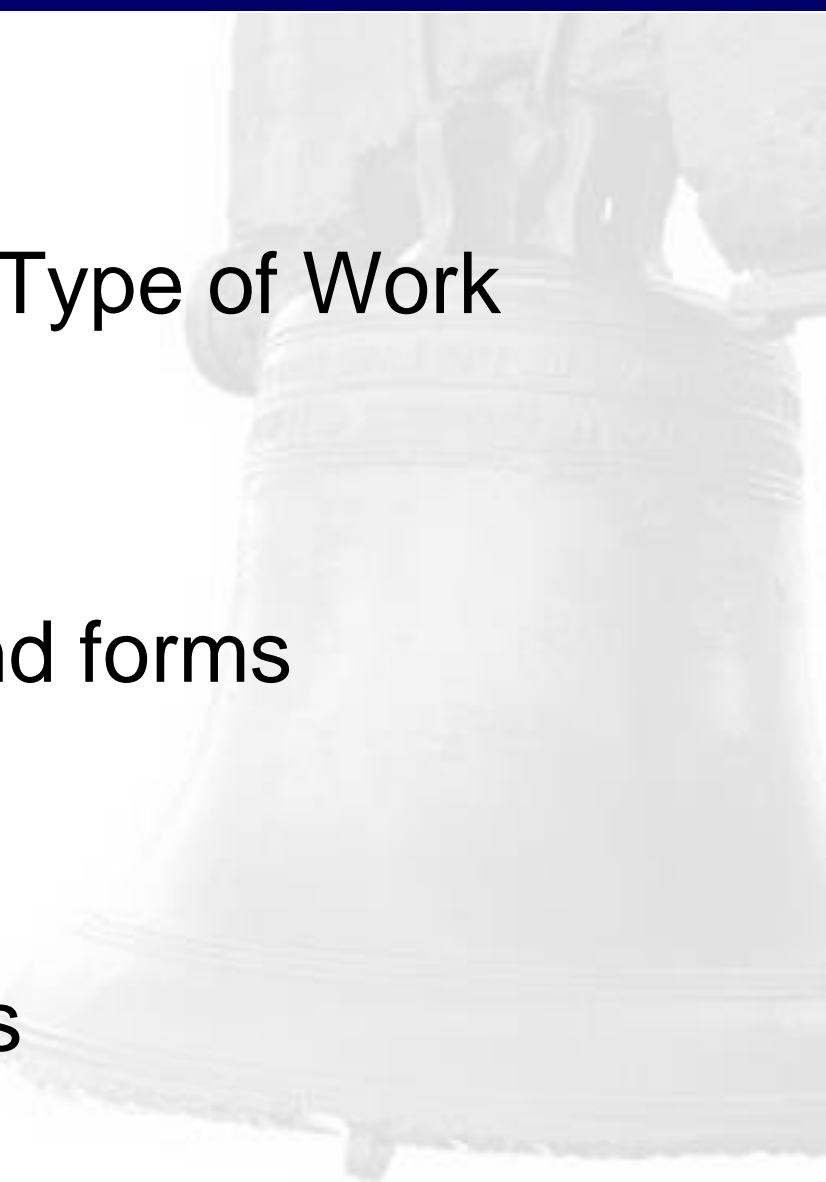
The Players



Origin of Claims

- **Why do contractors fail?**
 - Poor cash flow, liquidity
 - Inadequate profit margins / Regular and significant profit fade
 - Excessive debt and overhead
 - Inadequate Insurance
 - Inadequate accounting / Management systems
 - Poor estimating; Purchasing procedures
 - Inadequate project supervision, administration

Origin of Claims

- **Project Issues**
 - Significant Change in Type of Work
 - Geography
 - Project Size
 - Onerous contract; bond forms
 - Unfamiliar Customer
 - Project financing
 - Exposure for damages
 - Subcontractor failure
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Bonded Obligations

- **Contract Surety**

- Performance Bond – Project Owner (Obligee) makes demand for Principal's breach of the contract
- Payment Bond – Principal's vendors make demand for amounts owed by Principal for labor or materials provided to bonded project

- **Commercial Surety**

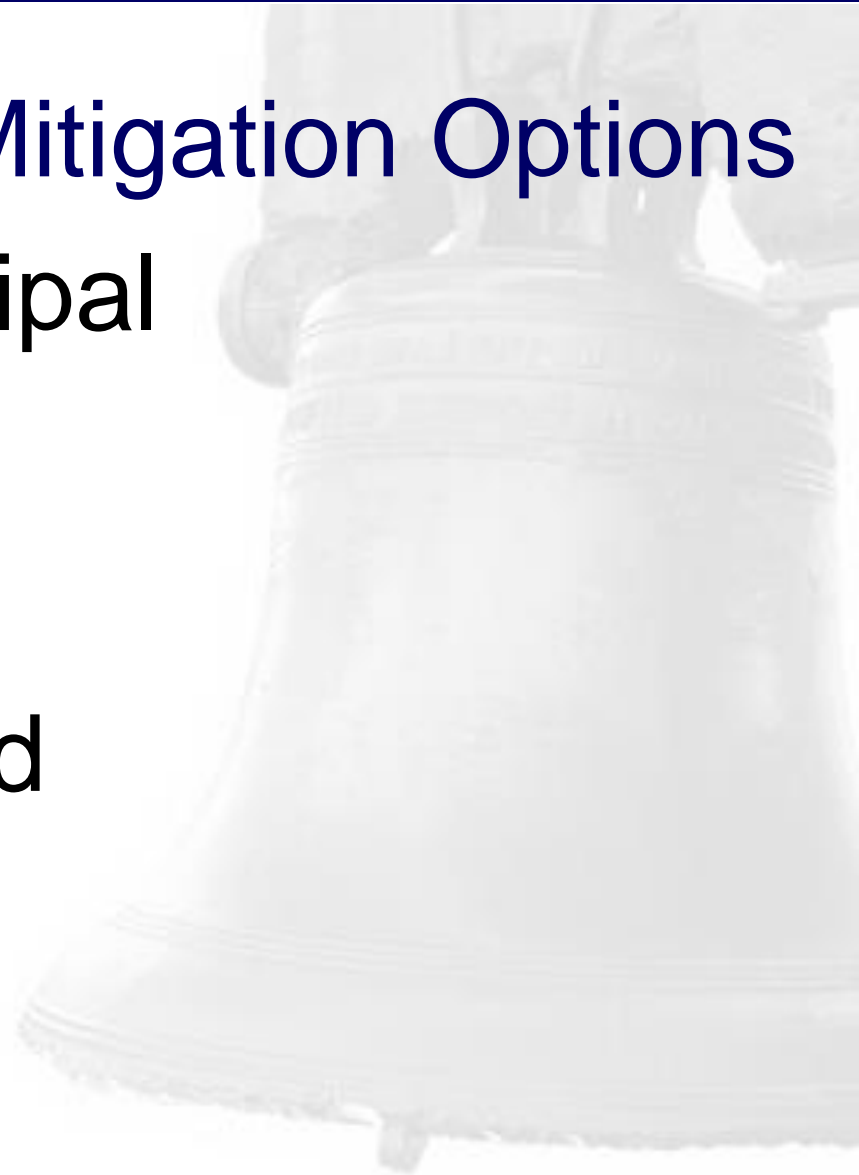
- Thousands of bond forms guaranteeing Principal's compliance with licenses or financial responsibilities

The Claim Process

- **Investigation**
 - Documentation
 - Books and records review
 - Engineering and Accounting consultants
 - Site inspection
 - **Determination of Liability**
 - Statutory defenses
 - Contractual defenses
 - Indemnity rights to demand Principal/Indemnitors resolve
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The Claim Process

- Traditional Surety Mitigation Options
 - Finance the Principal
 - Takeover
 - Tender
 - Buy back the bond
 - Deny



Loss Drivers

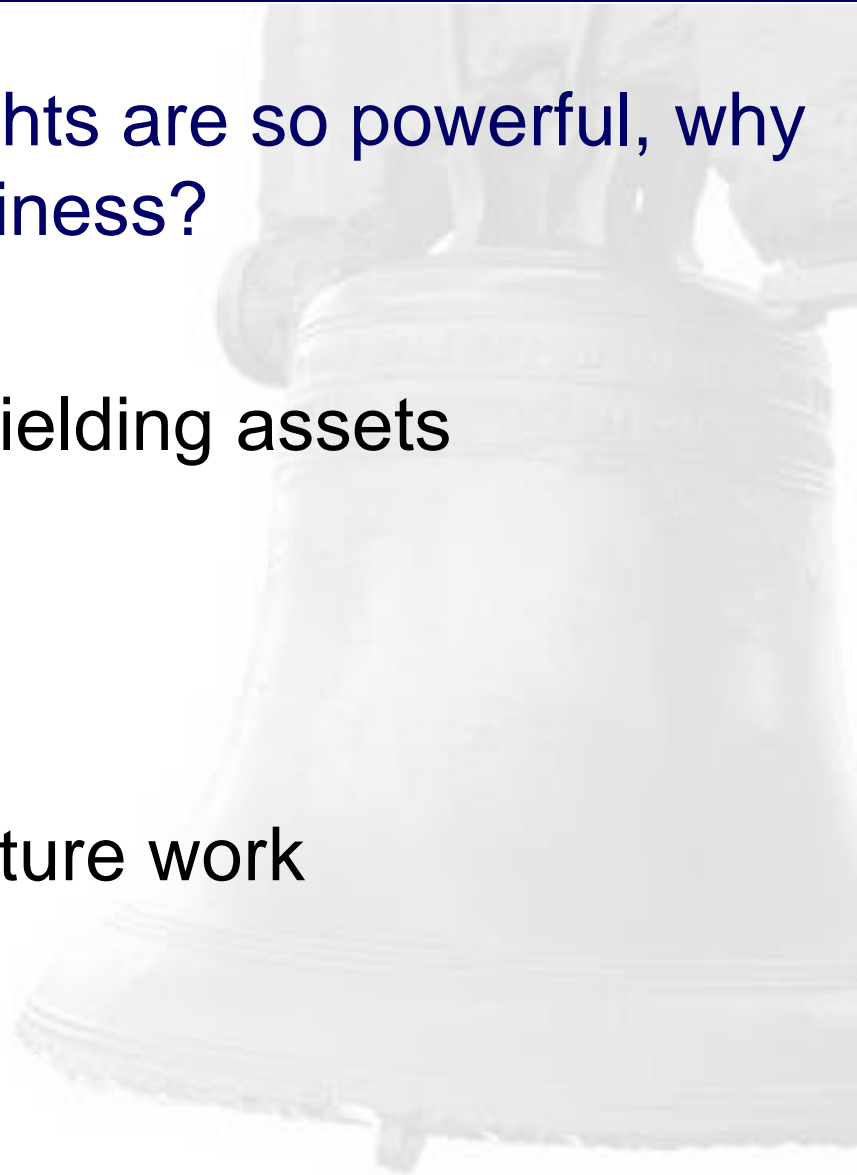
- Diminishing contract balances, overpayment
- Exposure for damages due to delay
 - Revenue generating projects
 - Time consuming investigative process
- Re-let premium charged to sureties
- Costs to correct defective work
- Obligees elect to cure defaults
- Consulting and attorneys fees to implement and monitor completion and pursue recovery
- Litigation expenses

Mitigation Tools

- Indemnity Agreements
 - Assignment rights to all assets of the bonded project
 - Security Interests
 - Right to demand collateral
 - Access to books and records
 - Attorney in Fact appointments
 - Trust Fund provisions
 - Common Law Indemnity & Subrogation rights
 - Funds Control
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Impediments to Recovery

- If the GIA and equitable rights are so powerful, why isn't surety a zero loss business?
 - Cash Flow; Liquidity
 - Indemnitors "all in" or shielding assets
 - Competition with Banks
 - Bankruptcy
 - Homestead Exclusions
 - Insufficient backlog of future work
 - Loss of Surety Credit



Thank you!

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