



REDUCING RISKS WHILE EXPANDING PORTS

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Law Office of Alan K. Goldstein
San Francisco Bay Area

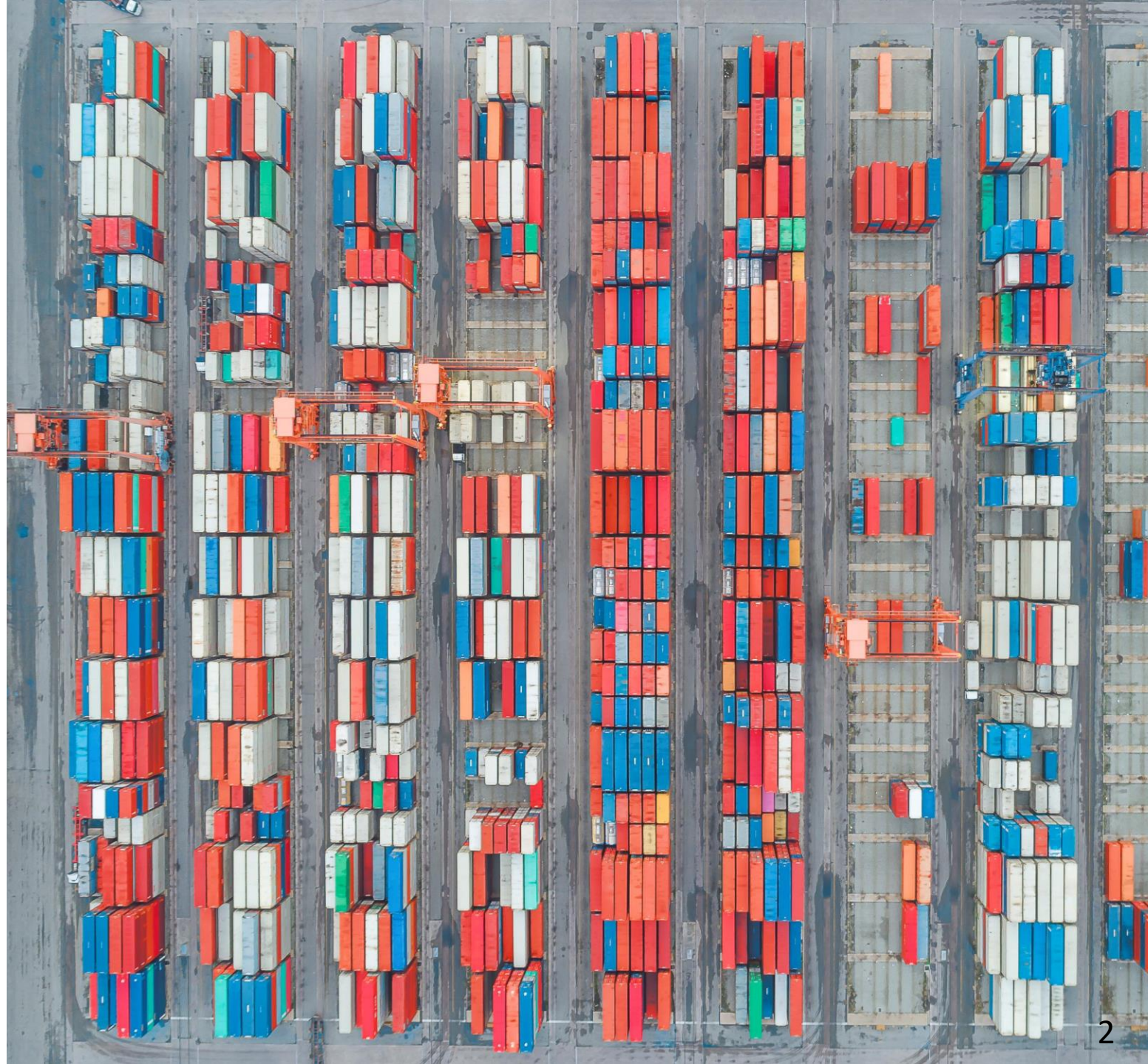
alan@alankgoldsteinlaw.com

415-870-5127

www.alankgoldsteinlaw.com

INFRASTRUCTURE INVESTMENT, EXPANSION AND DEVELOPMENT ARE WATCHWORDS FOR U.S. PORTS IN THIS DECADE

- Especially since the Infrastructure Investment and Jobs Act provides billions of dollars.
- And some states are providing additional incentives of their own.
- Expanding and modernizing offer great advantages in a competitive global market.

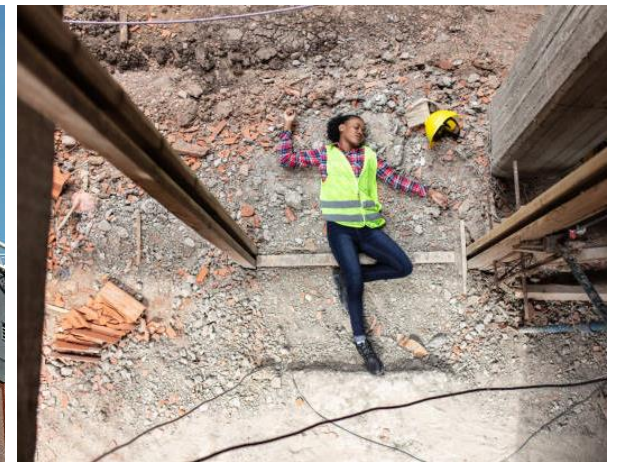


BUT DEVELOPMENT AND EXPANSION ARE NOT RISK-FREE

- Accidents. Property damage. Injuries. Poor workmanship. Delays. And a host of problems with contractors can derail expansion and expose your port to claims and disputes.

“In construction, the only project that goes exactly according to plan is the lunch break.”

—A construction professional



DEFECTIVE CONSTRUCTION AT PORT OF ALASKA

“The evidence was clear that the structure left by the Government on Anchorage’s property by MARAD is dangerous, prevents Anchorage from using its property and creates navigational hazards . . . Anchorage has no choice but to remove the defective structure”

—Opinion, Federal Court of Claims



THOUGHTFUL LEGAL PLANNING AND DRAFTING CAN REDUCE AND SHIFT RISKS

How you piece together agreements with contractors and consultants before construction makes a big difference in your legal exposures after work begins.

“This contract is so one-sided that I am astonished to find it written on both sides of the paper.”

**—Raymond Evershed, 1st Baron Evershed
(British judge)**



SOME ASPECTS OF YOUR INFRASTRUCTURE EXPANSION CONTRACTS AND HOW TO CAST THEM IN YOUR FAVOR

- Scope of Work
- Indemnity, Defense and Hold Harmless
- Insurance
- Scheduling with Carrots and Sticks
- Warranties
- Cancellation and Termination
- Dispute Resolution





SCOPE OF WORK: DOES THE CONTRACT RECITE WHAT YOU WANT AND WHAT THE OTHER PARTY PROMISED?

Or will you be locked into something you did not ask for, that does not protect you adequately, because the wording is vague and imprecise?

EXECUTIVES, OPERATING PERSONNEL AND YOUR LAWYER NEED TO DISCUSS PRECISELY WHAT YOU WANT

And the lawyer needs to draft and review the contract carefully with you to make sure it promises what you bargained for.

“Risk comes from not knowing what you’re doing.”

— Warren Buffet, Legendary investor



INDEMNITY, DEFENSE AND HOLD HARMLESS CLAUSE: PROTECTION AGAINST LOSS AND EXPENSE

The point is to make the damaged port whole, at the expense of the offending contracting party.



A construction site at sunset. The sky is a gradient of orange and pink. In the foreground, the silhouettes of steel beams and scaffolding are visible. A crane hook is suspended in the air, holding a large, dark rectangular object. A worker is visible on a lower level of the structure.

**INDEMNITY INVOLVES SHIFTING RISK OF
CONSTRUCTION LOSS FROM YOUR PORT TO
THE PARTY YOU CONTRACTED WITH,
PREFERABLY WITHOUT PROOF OF FAULT**



THE INSURANCE CLAUSE, INDEMNITY'S TWIN

**Here too the goal is to shift the risk
of loss from your port to the
contractor or others you have
retained and their insurance
companies.**

SPECIFYING INSURANCE THE CONTRACTOR BUYS TO HELP PROTECT YOU

- Primary coverage
- Additional insured
- Subrogation waiver
- Limits & deductible
- Rating & notice





**SCHEDULING WITH
CARROTS AND STICKS:
INCENTIVES FOR FINISHING EARLY
AND LIQUIDATED DAMAGES FOR
FINISHING LATE**



WARRANTIES PROTECT AGAINST STUFF THAT DOESN'T WORK

“We are stuck with technology when what we really want is just stuff that works.”

—Douglas Adams, Author

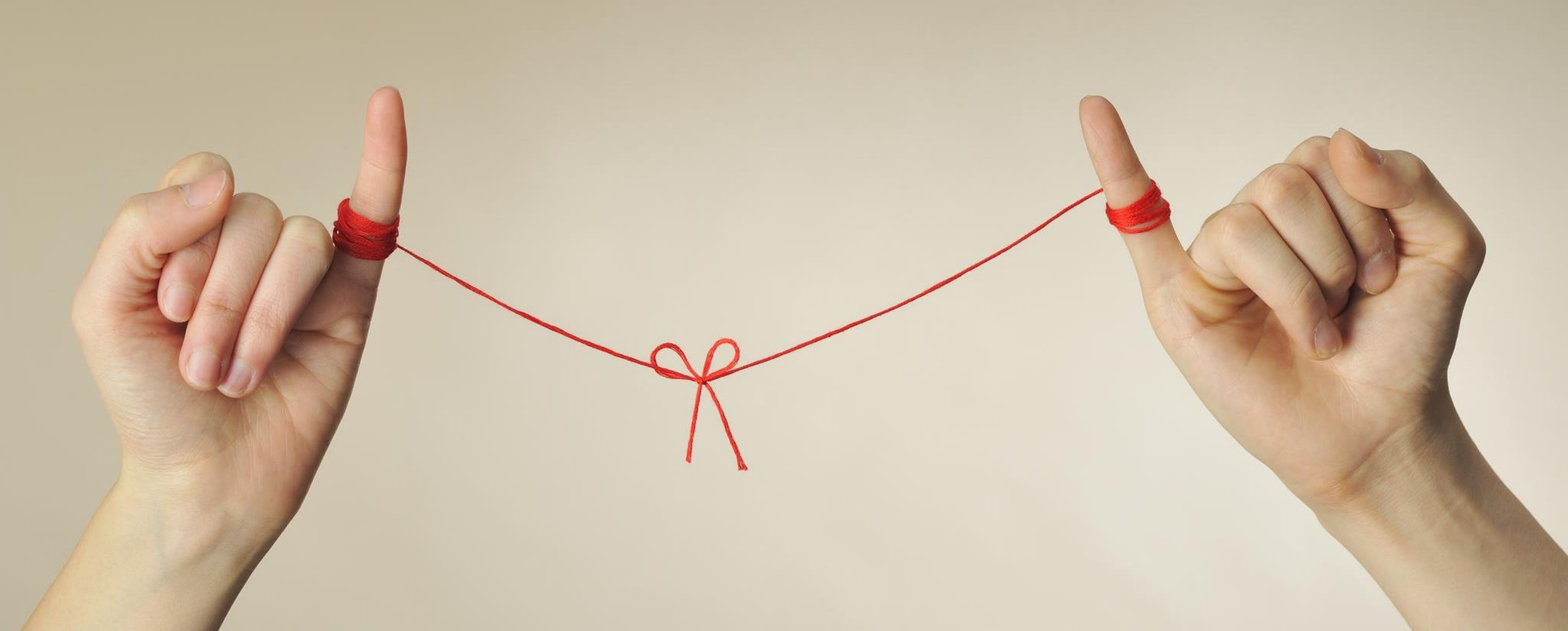
WHAT DOES THE WARRANTY COVER?

"... anything that's apt to happen to an appliance like a blender isn't covered by the warranty anyway, so I never send them in. If it breaks, I'll buy a new one. That's the American way."

—Andy Rooney, American radio and TV personality

- SCOPE
- DURATION
- LIMITS
- REMEDY





CANCELLATION AND TERMINATION: UNTYING THE CONTRACT KNOT

The contract provides entry into the relationship. It also should provide a way out when things go terribly wrong.

DISPUTE RESOLUTION: BREAKING AN IMPASSE

- Which mechanism?
- Which law?
- Which forum?

*“There’s only you and me and
we just disagree.”*

*—Dave Mason, We Just Disagree, from the
album Let It Flow*



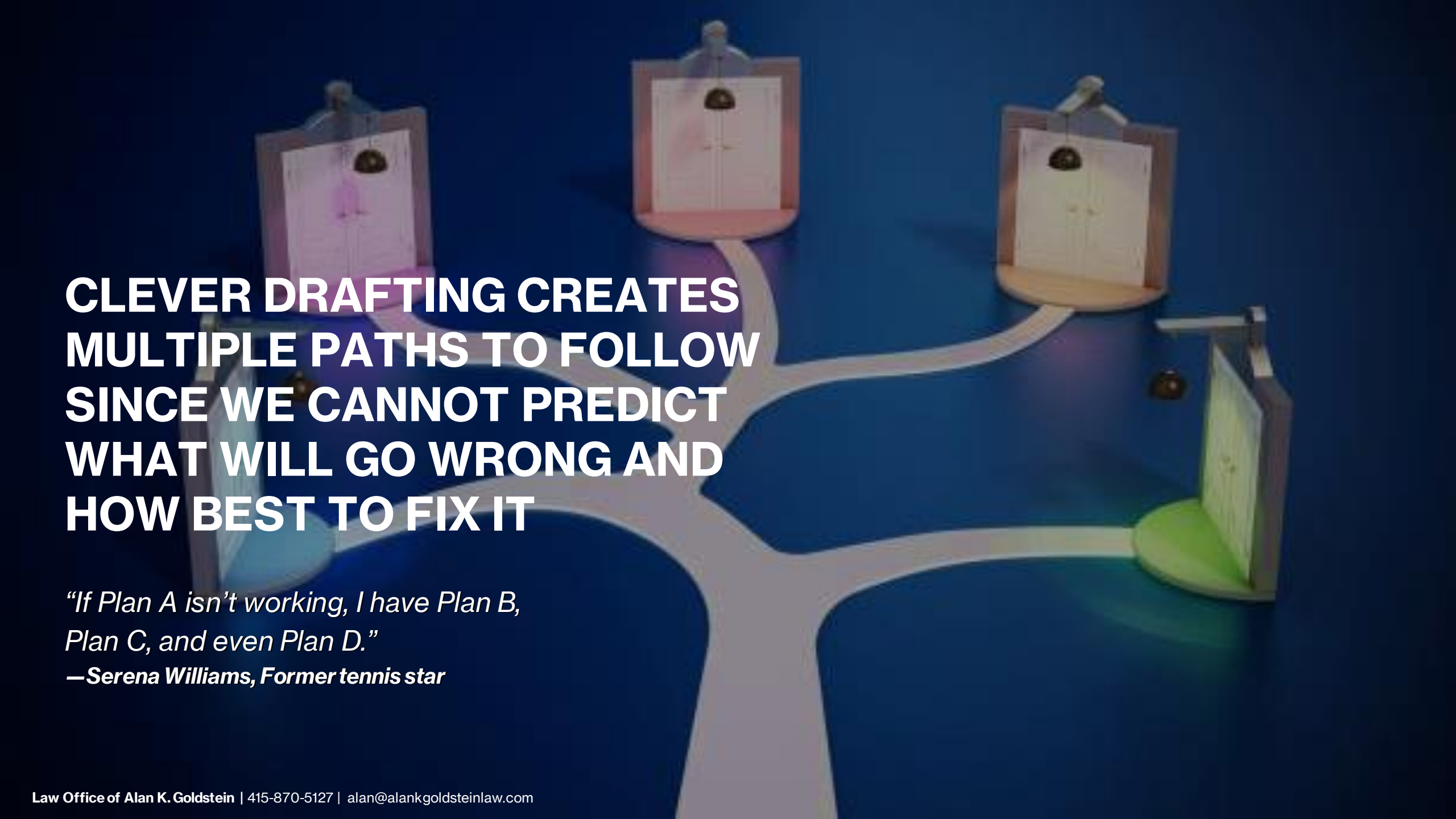
A top-down view of a baseball field's home plate. The plate is a white pentagon, heavily worn with brown dirt streaks and smudges. A baseball with red stitching and a slightly greenish-yellow surface is positioned on the right side of the plate. The surrounding field is dark brown dirt with some texture and small rocks.

HOME FIELD ADVANTAGE

When resolving disputes, it's better
to play on your turf than on theirs.

*“They’re trying to take home-field
advantage from us.”*

—Lance Berkman, Former baseball star



**CLEVER DRAFTING CREATES
MULTIPLE PATHS TO FOLLOW
SINCE WE CANNOT PREDICT
WHAT WILL GO WRONG AND
HOW BEST TO FIX IT**

*“If Plan A isn’t working, I have Plan B,
Plan C, and even Plan D.”*

—Serena Williams, Former tennis star

A WELL-CRAFTED CONTRACT INCLUDES MULTIPLE TOOLS FROM THE LEGAL TOOLBOX

We do not want to say essentially the same thing multiple times with different words because that can create ambiguity, but we do want to utilize multiple different legal tools to help us achieve our goal of shifting and reducing legal and financial risks.





**CONCLUSION: REDUCING EXPANSION RISK
REQUIRES CAREFUL LEGAL PLANNING AND
PRECISE CONTRACT WORDING**

*“It is impossible to unsign a contract,
so do all your thinking before you sign.”
— Warren Buffet, Legendary investor*



**Thank you for your
time and
consideration**

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