

Northwest Construction Consumer Council's Annual Conference

Integrated Project Delivery (IPD): Key Considerations and Possible Pitfalls

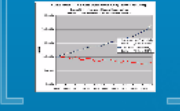
Presented by:
Sean C. Gay
Bart W. Reed
Steel Rives LLP



History

- Project performance
- Project disputes
- Increased productivity generally
- Construction industry is the exception to increased productivity
- Industry has historically tried to address these issues
- These efforts have had mixed results

- Project inefficiencies
- Project disputes
- Increased productivity generally
- U.S. Dept. of Labor Report



Construction industry is the exception to increased productivity

- Information is lost because of hand-offs between phases.
- Total waste in construction industry estimated at 30%.

- Industry has historically tried to address these issues
- Changing the contract clauses
- Partnering
- Design bid
- Best practices
- All are examples of some form of collaboration
- Mixed results

I. History
II. IPD as a concept
III. IPD in practice
IV. Conclusion

IPD As a Concept

- Potential for seismic shift
- Emphasis on collaboration
- Goes further than past efforts with a contractual emphasis on "we" rather than "I"



Industry wide documents developed to implement IPD at a contract collaborative level

- ConsensusDOCS 300
- AIA A305 International IPD Agreement
- AIA C190 - Interdocument (IPD)
- Build Digital Practice Documents - AIA E201 BIM and Digital Data (4/24/16) (2017) (Project Digital Data Process Flow) and 2020 Project Building Information Modeling Protocol Form
- Manufactured Forms

Examples of collaboration

- Early assembly of Project Team
- Building Information Modeling on a shared basis
- Co-Location of Project Participants
- Team Meetings
- Shared Risk/Reward

Contract Collaboration Provisions

- Shared risk/reward
- Multi-party agreements
- Project specific entities
- Safe harbor provisions
- Project insurance
- Transparent cost accounting
- Structured dispute resolution
- Project Neutral

IPD In Practice

- Early reports sparse at best
- Growing reports of projects with reduction in RFI's, change orders and other disputes



Claims and Contracts Not Tested

- Newfound Risk Exposure
- Design and Financial Risk

Significant Legal Issues of IPD

- Erosion of Spearin Doctrine
- Shifting in Means and Methods
- Economic Loss Doctrine/Independent Duty Doctrine

- ii-Defined Aspirational Language
- Third-Party Design Liability
- Elevated or Altered Standard of Care

Conclusion

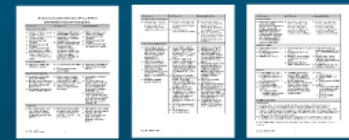
- Industry industry research to a problem must satisfy three criteria to be successful
- Industry awareness of the problem
- Industry will/likes to address the problem
- Market has owners to implement a solution to the problem

Only time will tell whether IPD is the answer to the challenges the industry has faced, a partial solution that is stepping the way to a yet-to-be determined and open sector approach to construction delivery or whether the multiple parties will revert to their historically untested and cross purposes approach to construction projects.



Questions?

AIA and ConsensusDOCS Integrated Project Delivery



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- Information is lost because of hand-offs between phases.
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- Industry has historically tried to address these issues
- Differing site conditions causes
- Partners
- Design bid
- Build/operate
- All are examples of some form of collaboration
- Proven results

IPD As a Concept

- Potential for seismic shift
- Emphasis on collaboration
- Goes further than past efforts with a contractual emphasis on "we" rather than "I"

Industry has historically tried to address these issues - IPD as a contractual approach

Industry model documents developed to implement IPD as a contract collaborative and

- ConsensusDOCS 300
- AIA A330 Transitional IPD Agreement
- AIA C190 Intera documents IPD
- BIM Digital Practice Documents - AIA E303 BIM and Digital Data Exchange (C201) Project Building Information Modeling Protocol Form and C202 Project Building Information Modeling Protocol Form
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Examples of collaboration

- Early assembly of Project Team
- Building Information Modeling on a shared basis
- Co-Location of Project Participants
- Team Meetings
- Shared Risk-Reward

Contract Collaboration Provisions

- Shared Risk/Reward
- Multi-party agreements
- Project specific entities
- Subcontractor provisions
- Project insurance
- Transparent cost accounting
- Structured dispute resolution
- Project Neutral

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IPD in Practice

- Early reports sparse at best
- Growing reports of projects with reduction in RFIs, change orders and other disputes

Registered relationship contracts - how common they are actually
Issues with self-administration - issues with some jurisdictions

Clauses and Contracts Not Tested

- Newfound Risk Exposure
- Design and Financial Risk

Significant Legal Issues of IPD

- Erosion of Spearin Doctrine
- Shrink in Means and Methods
- Economic Loss Doctrine/Independent Duty Doctrine

- Re-Defined Aspirational Language
- Third-Party Design Liability
- Elevated or Altered Standard of Care

Ownership of the BIM Model and Data

- Licensing and Professional Design Responsibility
- Collective Waiver of Claims

Impact on Indemnity Clauses

- Business Entity
- Inefficient Insurance Products

Conclusion

Are more industry approaches to a problem more likely to be successful if:

- Industry awareness of the problem
- Industry solutions to address the problem
- Makes it more owners to implement a solution to the problem

Only time will tell whether IPD is the answer to the challenges the industry has faced. Is a parallel solution that is stop along the way to a yet to be determined and even better approach to construction delivery or whether the multiple parties will revert to their indemnity based and error-prone approach to construction projects.

IPD is most likely a point in the continuum of collaboration

Questions?

AIA and ConsensusDOCS Integrated Project Delivery

Document	Key Features
AIA A330 Transitional IPD Agreement	Multi-party agreement, shared risk/reward, project specific entities
AIA C190 Intera documents IPD	Subcontractor provisions, project insurance, transparent cost accounting
ConsensusDOCS 300	Structured dispute resolution, project neutral

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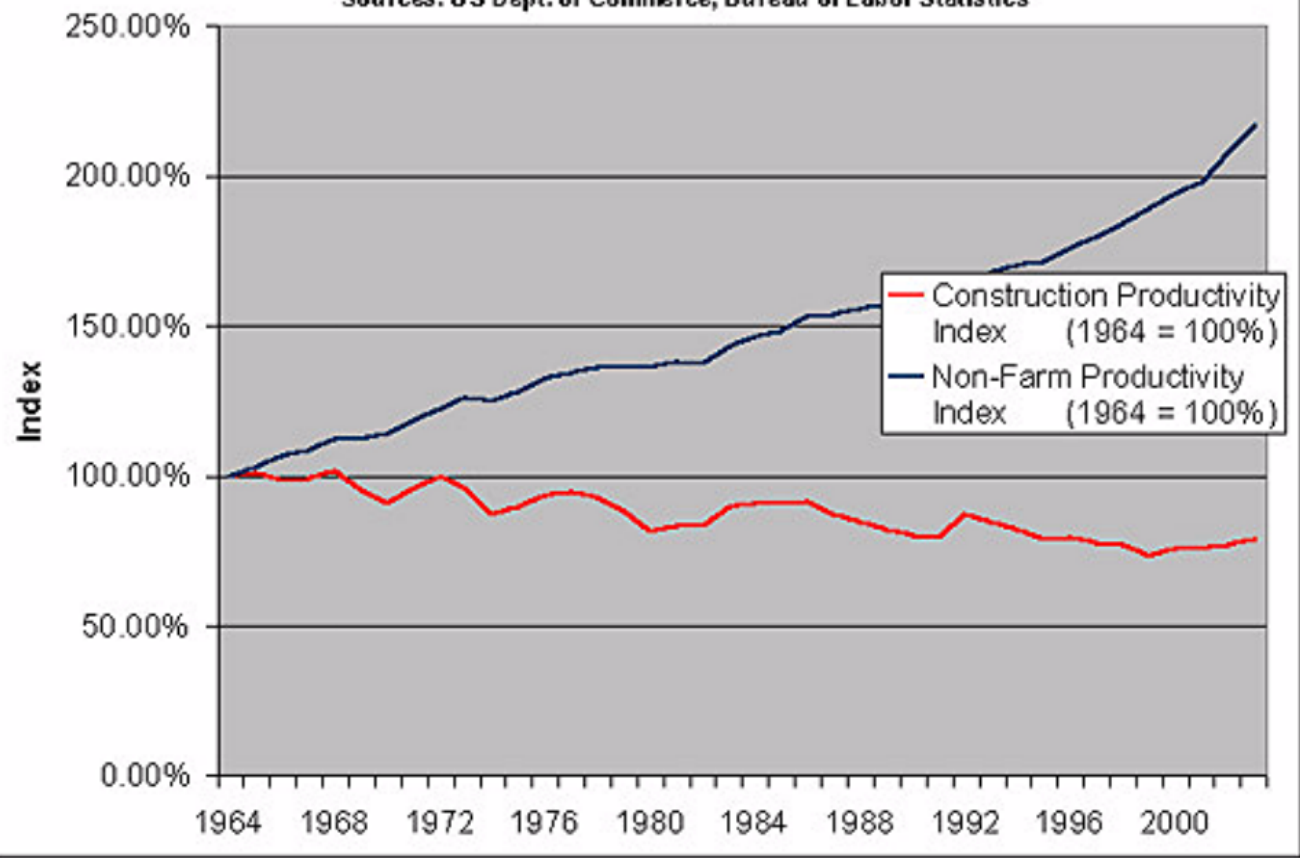
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Construction & Non-Farm Labor Productivity Index (1964-2003)

Constant \$ of contracts / workhours of hourly workers
Sources: US Dept. of Commerce, Bureau of Labor Statistics



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 - Differing site condition clauses
 - Partnering
 - Design build
 - Mediation
- All are examples of some form of collaboration
- Mixed results

IPD As a Concept

- Potential for seismic shift
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- Industry has continued to embrace collaboration -- ENR Survey
- Differences in IPD Approach

Project Factors	Traditional Project Delivery	Integrated Project Delivery
Teams	<u>Fragmented</u> , assembled on “just as needed” or “minimum necessary” basis, strongly hierarchical, controlled	An <u>integrated</u> team entity comprising key project stakeholders, assembled early in the process, open, collaborative
Process	<u>Linear, distinct, segregated</u> ; knowledge gathered “just as needed,” information hoarded, silos of knowledge and experience	<u>Concurrent and multilevel</u> , early contributions of knowledge and expertise, information openly shared, stakeholder trust and respect
Risk	<u>Individually</u> managed, transferred to the greatest extent possible	<u>Collectively</u> managed, appropriately shared
Compensation / Reward	<u>Individually</u> pursued, minimum effort for maximum return (usually) first cost-based	<u>Team</u> success tied to project success, value-based
Communications / Technology	<u>Paper-based</u> , two-dimensional, analog	<u>Digitally</u> based, virtual; Building Information Modeling (three-, four- and five-dimensional)
Agreements	Encourage unilateral effort, allocate and transfer risk, no sharing	Encourage, foster, promote and support multilateral open sharing and collaboration; risk sharing

- Industry-wide documents developed to implement IPD at a contract collaborative level
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AIA and ConsensusDOCS Integrated Project Delivery

AIA and ConsensusDOCS Integrated Project Delivery Side-by-Side Document Comparison

AIA A235-2008	AIA C195-2008	ConsensusDOCS 300
Contractual Relationships		
<ul style="list-style-type: none"> AIA A195: Agreement between Owner and Contractor AIA B195: Agreement between Owner and Architect Owner agreements with consultants Architect agreements with consultants Contractor agreements with subcontractors and suppliers Parties share the terms of A295, General Conditions of the Contract for Integrated Project Delivery. 	<ul style="list-style-type: none"> Single-purpose entity formed as a limited liability company (LLC) LLC members: owner (C196); architect (C197); construction manager (C197) Separate contracts (either with the LLC or directly with an LLC member) for design consultants, contractor, subcontractor, suppliers, etc., with early involvement sought so they can contribute knowledge and experience in early design decisions 	<ul style="list-style-type: none"> Tri-party agreement: owner, contractor, and architect Owner agreements with consultants Architect agreements with consultants Contractor agreements with subcontractors and suppliers
Decision-Making Bodies		
<ul style="list-style-type: none"> Owner, in consultation with architect and contractor 	<ul style="list-style-type: none"> Governance board (C195 Article 8) Project management team (C195 Exhibit D) 	<ul style="list-style-type: none"> Management group (Article 4) Collaborative project delivery team (§3.3)
Project Cost Determination		
<ul style="list-style-type: none"> Guaranteed maximum price (GMP) (A195 Exhibit A) Upon the owner's acceptance of the detailed design documents the contractor develops the GMP (A295 §7.6) The contractor guarantees the contract sum (A195 §A1.1.1) 	<ul style="list-style-type: none"> Target cost proposal defined before completion of criteria design phase (C195 Article 5) Must be approved by the owner Can only be adjusted by unanimous agreement of the LLC members 	<ul style="list-style-type: none"> Project target cost estimate (PTCE) (§8.3) The owner, designer, and contractor jointly develop the PTCE once the management group has determined the project design is sufficiently complete (§8.3.1) The project budget is the owner's estimate of the total cost to design and construct the project and cannot be revised without the approval of the owner (§8.1.1)
Target Costs		
<ul style="list-style-type: none"> The contractor bears costs in excess of the GMP without reimbursement or additional compensation from the owner (A195 §4.2.2) 	<ul style="list-style-type: none"> The members are responsible for expenses when the actual cost exceeds the target cost (C195 §§2.3 and 10.2.2; C196 §5.1; C197 §7.2) 	<ul style="list-style-type: none"> If the PTCE is exceeded, parties indicate loss allocation approach 4. Borne by the owner (§11.5.1), DR shared by the parties on an agreed percentage or other basis (§11.5.2)

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AIA A295-2008	AIA C195-2008	ConsensusDOCS 300
Incentive Compensation Programs		
<ul style="list-style-type: none"> Voluntary choice of owner to share any savings generated when the actual cost of construction is less than the GMP (A196 Exhibit A, §A.1.1.1) 	<ul style="list-style-type: none"> Incentive compensation when actual cost of construction is less than the target cost (C195 Article 10) Goal achievement compensation (C195 Exhibit E) 	<ul style="list-style-type: none"> The management group develops a financial incentive program to encourage collaborative project delivery and specified in an amendment to the agreement (§11.2) If actual cost of the project is less than the PTCE the parties can share the savings on a specified percentage or other basis (§11.4)
Contractual Liability Provisions		
<ul style="list-style-type: none"> Statute of repose set at 10 years for owner, architect, and contractor; any subsequent claims are waived (owner—A295 §12.6 and B195 §5.2; architect—B195 §5.2; contractor—A295 §12.6) Waivers of subrogation for damages caused by fire or other loss covered by property insurance (A295 §11.3.7) Waiver of consequential damages (owner—A295 §13.1.6 and B195 §5.3.1; architect—B195 §5.3.1; contractor—A295 §13.1.6) No limitation of liability provisions are included 	<ul style="list-style-type: none"> Waiver of claims: member v. company and other members (C195 §6.2.1.11); owner v. members (C195 §6.2.2.5; C196 §5.4); company v. members (C197) Members not liable to the company or other members for any loss, damage, or claim incurred by an act or omission of the member on behalf of the company and performed in good faith (C195 §12.2; C197 §7.1) The company and members' liability limited to the amount of incentive compensation received and if insufficient, to sums recovered from insurance (company—C195 §6.2.2.6; members—C195 §6.2.1.6) The company indemnifies a member for any loss, damage, or claim incurred by an act or omission of the member on behalf of the company performed in good faith (C195 §12.3.1) Waivers of subrogation (C195 §6.2.1.10 and 6.2.2.7; C196 §6.2) No general waiver of consequential damage 	<ul style="list-style-type: none"> Selection of one of two risk allocation methods: (§3.8.2) "Safe Harbor" decisions—a release from liability for an omission, mistake, or error in judgment whether negligent or not, but performed in good faith, or Traditional risk allocation—each party fully liable for its own negligence and breaches of the contract and warranty (a limitation on the designer's and contractor's liability can be established under this approach) Waiver of consequential damages (§3.8.3) The designer is responsible and liable for the services provided by its consultants (§12.9) The contractor is responsible for acts or omissions of parties performing portions of the work for the contractor or any of its subcontractors (§13.1.2) Indemnification clauses for negligent acts or omissions (owner—§21.1.1; designer—§21.1.3; contractor—§21.1.2)

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Delays and Extras		
<ul style="list-style-type: none"> Because the contractor assumes greater responsibility throughout the development of the GMP, the owner and architect probably will not be liable to the contractor for damages resulting from errors, inconsistencies, or omissions the contractor reports (A295 §9.2.4), virtually eliminating delays and extras claims 	<ul style="list-style-type: none"> Because the contractor is involved early in the design phase and has greater knowledge of the project schedule, the ability to claim delays and extras during construction is severely limited 	<ul style="list-style-type: none"> Because the contractor is involved early in the design phase and has greater knowledge of the project schedule, the ability to claim delays and extras during construction is severely limited
Dispute Resolution		
<ul style="list-style-type: none"> Initial decision maker [30 days] (A295 §13.2) Mediation [approximately 60 days] (A295 §13.3) Arbitration (A295 §13.4) 	<ul style="list-style-type: none"> Mutual decision [15 days] (C195 §18.2) Governance board [30 days] (C195 §18.3) Neutral and dispute resolution committee [60 days] (C195 §18.4) Neutral reaches final and binding decision (C195 §18.4) 	<ul style="list-style-type: none"> Direct discussion through parties' representatives [5 days] (§23.2) 4. Management group (§23.2) Elective method: dispute mitigation using a project neutral or dispute review board [5 days] (§23.3) Mediation [45 days] (§23.4) Arbitration or litigation (§23.5)
Insurance		
<ul style="list-style-type: none"> Owner's liability (A295 §11.2) Property (A295 §11.3) Boiler and machinery (A295 §11.3.2) Loss of use (A295 §11.3.3) Architect (B195 §1.4) Professional liability Contractor (A295 §11.1.1.1 - 11.1.1.8) Coverage for claims specifically stated in general conditions agreement 	<ul style="list-style-type: none"> Availability of an insurance product is limited to market conditions and no effective coverage tool exists to insure this SPE arrangement Upon dissolution of the SPE, the company agrees to exist and has no insurance coverage; subsequent claims may fall on the insurance coverage of the members' policies 	<ul style="list-style-type: none"> Owner Property (§21.4) Owner's liability (§21.5) Contractor Elective professional liability (§21.3.2) Designer Insurance for claims arising out of performance of the agreed upon services (§21.2.2) Professional liability (§21.3.1)
Liability Resolutions		
<p>Common to All</p> <ul style="list-style-type: none"> Spearin Doctrine—The protection traditionally offered by the implied warranty that the plans and specifications are adequate is eliminated by the contractor's contribution to design decisions. Insurance—Potential need for software errors and omissions insurance for companies providing website design and hosting for projects where BIM is used collaboratively by design and construction parties. Due to the collaborative nature of IPD, consensus decisions are often made and the question of which insurance carrier coverage is applicable remains uncertain. Role Blurring—The added involvement of the contractor and trade contractors in the design phase potentially increases their liability. Professional liability insurance may be required for contractors. 		

(Source: Kristin Ballouin, New Standard for Integrated Project Delivery: Analysis of Structure, Risk and Insurance)

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3

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 - Project Neutral

- Industry has continued to embrace collaboration -- ENR Survey
- Differences in IPD Approach

Project Factors	Traditional Project Delivery	Integrated Project Delivery
Team	Fragmented, assembled to "load up" project on "the main contractor" who is usually the only "load" considered	Highly integrated team with contracting, design, and construction stakeholders working closely in ProjectWise, open, and historical ProjectWise, and other tools
Process	Linear, sequential, and rigid; sequential design, build, and operate phases; limited information exchange; and sequential information exchange	Collaborative, iterative, and open; concurrent design, build, and operate phases; and open information exchange
Risk	Individually managed, transferred to the lowest bidder (owner, architect, contractor, subcontractor, and supplier)	Collectively managed, appropriately shared
Compensation Model	Individually focused -- primarily fixed fee or time and materials plus fixed fee cost-based	Team-based, focused on project success value-based
Contractual and Termination	Agreement-based, fixed relationship, no change	Flexibly based, allowing for change and termination
Agreements	Contractual, individual, and sequential	Relationship, team, and collaborative

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- Shared Risk-Reward

IPD In Practice

- Early reports sparse at best
- Growing reports of projects with reduction in RFIs, change orders and other disputes

A cautionary note



- Negotiated relationship contracts v. low competitive bid contracts
- Teams with old relationships v. teams with newer relationships

Significant Legal Issues of IPD

- Clauses and Contracts Not Tested
- Newfound Risk Exposure
- Design and Financial Risk

- Erosion of Spearin Doctrine
- Sharing in Means and Methods
- Economic Loss Doctrine/ Independent Duty Doctrine

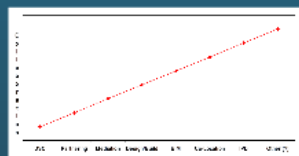
- Ill-Defined Aspirational Language
- Third-Party Design Liability
- Elevated or Altered Standard of Care

- Ownership of the BIM Model and Data
- Licensing and Professional Design Responsibility
- Collective Waiver of Claims

- Impact on Indemnity Clauses
- Business Entity
- Insufficient Insurance Products

Only time will tell whether IPD is the answer to the challenges the industry has faced, a partial solution that is a stop along the way to a yet-to-be determined and even better approach to construction delivery, or whether the multiple parties will revert to their historically territorial and cross purposes approach to construction projects.

IPD is most likely a point in the continuum of collaboration



Questions?

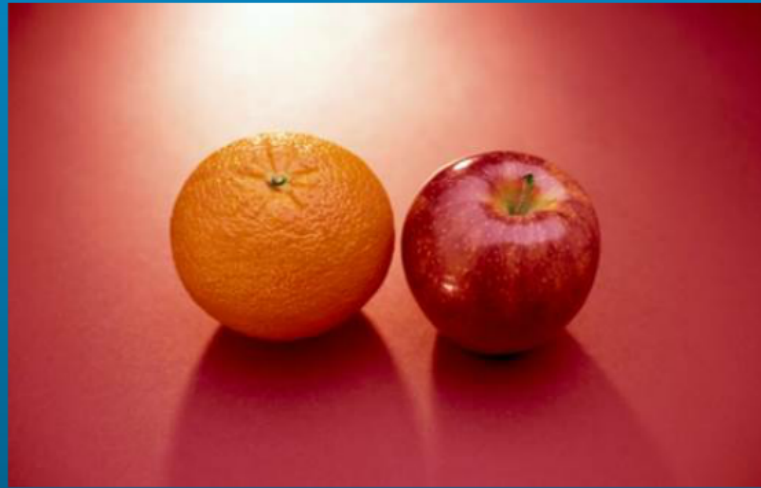
AIA and ConsensusDOCS Integrated Project Delivery

AIA and ConsensusDOCS Integrated Project Delivery	AIA A295 Transitional IPD Agreement	AIA C190-series documents (SPE)	AIA E203 (BIM and Digital Data Exhibit)	AIA G201 (Project Digital Data Protocol Form)	AIA G202 (Project Building Information Modeling Protocol Form)
<ul style="list-style-type: none"> ConsensusDOCS 300 AIA A295 Transitional IPD Agreement AIA C190-series documents (SPE) Draft Digital Practice Documents -- AIA E203 (BIM and Digital Data Exhibit), G201 (Project Digital Data Protocol Form) and G202 (Project Building Information Modeling Protocol Form) Manuscripted Forms 	<ul style="list-style-type: none"> ConsensusDOCS 300 AIA A295 Transitional IPD Agreement AIA C190-series documents (SPE) Draft Digital Practice Documents -- AIA E203 (BIM and Digital Data Exhibit), G201 (Project Digital Data Protocol Form) and G202 (Project Building Information Modeling Protocol Form) Manuscripted Forms 	<ul style="list-style-type: none"> ConsensusDOCS 300 AIA A295 Transitional IPD Agreement AIA C190-series documents (SPE) Draft Digital Practice Documents -- AIA E203 (BIM and Digital Data Exhibit), G201 (Project Digital Data Protocol Form) and G202 (Project Building Information Modeling Protocol Form) Manuscripted Forms 	<ul style="list-style-type: none"> ConsensusDOCS 300 AIA A295 Transitional IPD Agreement AIA C190-series documents (SPE) Draft Digital Practice Documents -- AIA E203 (BIM and Digital Data Exhibit), G201 (Project Digital Data Protocol Form) and G202 (Project Building Information Modeling Protocol Form) Manuscripted Forms 	<ul style="list-style-type: none"> ConsensusDOCS 300 AIA A295 Transitional IPD Agreement AIA C190-series documents (SPE) Draft Digital Practice Documents -- AIA E203 (BIM and Digital Data Exhibit), G201 (Project Digital Data Protocol Form) and G202 (Project Building Information Modeling Protocol Form) Manuscripted Forms 	<ul style="list-style-type: none"> ConsensusDOCS 300 AIA A295 Transitional IPD Agreement AIA C190-series documents (SPE) Draft Digital Practice Documents -- AIA E203 (BIM and Digital Data Exhibit), G201 (Project Digital Data Protocol Form) and G202 (Project Building Information Modeling Protocol Form) Manuscripted Forms

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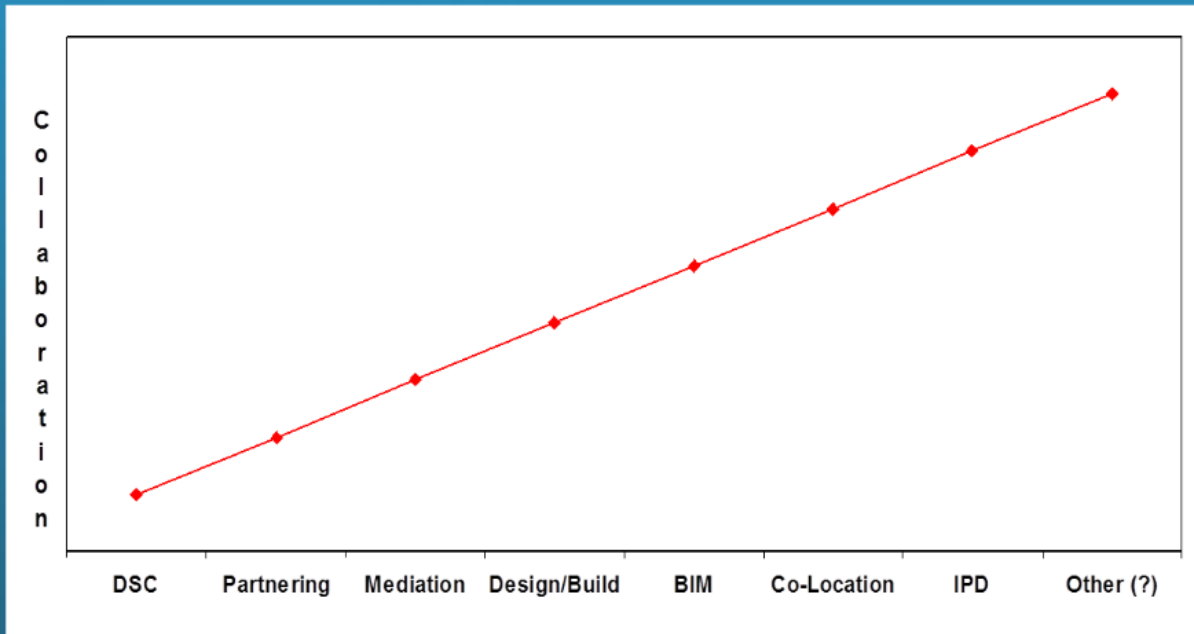
- Impact on Indemnity Clauses
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Conclusion

- Any new industry approach to a problem must satisfy three criteria to be successful
 - Industry awareness of the problem
 - Industry initiatives to address the problem
 - Mandate from owners to implement a solution to the problem

Only time will tell whether IPD is the answer to the challenges the industry has faced, a partial solution that is a stop along the way to a yet-to-be determined and even better approach to construction delivery, or whether the multiple parties will revert to their historically territorial and cross purposes approach to construction projects.

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point in the continuum
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Questions?

Sean C. Gay

Experience

Sean Gay is a partner practicing in the Real Estate and Construction group. Sean has substantial experience litigating disputes and drafting and negotiating construction and design contracts. In addition, he has extensive public contracting experience, having litigated bid protests and contract disputes. He has also drafted solicitation documents, such as requests for proposals and invitations to bid, and has negotiated and drafted several construction and design contracts for public agencies.

Before joining Stoel Rives, Sean worked in the construction industry in Alaska, Hawaii and Washington. As a construction project manager, project engineer and field engineer, Sean was intimately involved in the technical and financial aspects of his construction projects. Now Sean applies that real-world experience to his clients' legal issues. His knowledge about how complex construction projects get managed and built, and occasionally result in disputes, has proved an invaluable resource in his legal career.

Representative Work

Construction Claims Litigation

- Represented subcontractor in large litigation matter involving delay and defective work claims (Washington)
- Represented developers/owners in multiple contracts and litigation matters (multistate)
- Represented local developer in large dispute involving delay and defective work claims asserted by national homebuilder (Oregon)
- Represented major technology company defending and pursuing claims related to manufacturing facility construction and design (Oregon).

Construction Defects Litigation

- Represent large school district owner in multimillion-dollar litigation matter involving construction defects in a recently constructed school building (Oregon)
- Represented owner in multimillion-dollar litigation matter involving defects in a mixed-use condominium project (Oregon)
- Represented developer/owner in multiple defect litigation matters for western states hospitality developer (California, Oregon and Washington)

Construction Lien Disputes and Litigation

- Represented large national lender in lien foreclosure litigation matter (Oregon)



Partner

Portland, OR
(503) 294-9239 direct
(503) 220-2480 fax

sean.gay@stoel.com

Education

- Willamette University College of Law, J.D., 2004
Executive Editor, *Willamette Law Review*
- Oregon State University, B.S., Civil Engineering, 1992

Admissions

- Oregon
- Washington
- U.S. District Court for the District of Oregon
- U.S. Court of Federal Claims

Sean C. Gay

- Represented design-build subcontractor in lien foreclosure matter (Oregon)
- Represented contractors in multiple construction lien matters (Oregon and Washington)

Public Contracting

- Represent public owner on construction and design procurement and CMGC contracting issues related to large bridge project in Portland (Oregon)
- Represented public owner on construction of large middle school (Oregon)
- Represented water district in emergency procurements (Oregon)

Public Contracting Disputes and Litigation

- Represented school district in dispute involving performance issues related to a recently constructed high-performance school building (Oregon)
- Represented large public utility in litigation regarding a contractor's bid protest (Oregon)

Professional Honors and Activities

- Listed among *Rising Stars* (Construction Litigation: Business), *Oregon Super Lawyers*®, 2008, 2013-2014
- Member of practice group nationally ranked Tier 1 for Construction Law (2010-2015) | Construction Litigation (2015) by U.S. News - Best Lawyers® "Best Law Firms"
- Member, Associated General Contractors, Oregon Columbia Chapter
- Member, Construction Management Association of America (CMAA), Oregon Chapter
- Member, American Society of Professional Estimators, Columbia-Pacific Chapter
- Member, Design-Build Institute of America (DBIA)

Presentations

- "Construction Default Rights and Remedies," Program Chair, The Seminar Group, June 3, 2015
- "Structural Forensic Engineering," HalfMoon Education Inc., Feb. 27, 2015
- "Launching Into the Future with Design-Build and Integrated Project Delivery," AGC Summer Convention, Aug. 9, 2014
- "Construction Defects: Legal Strategies, Tactics and Practical Concerns," Program Chair, The Seminar Group, May 16, 2014
- "Construction Financing, Contracts and Risk Management," Northwest Bank, May 7, 2014
- "Tricks, Traps and Ploys Used in Construction Scheduling in Oregon," Lorman Education Services, Apr. 30, 2014
- "Key Contract Provisions Related to Construction Scheduling and Delay," CMAA Oregon, July 30, 2013
- "The Law of Construction Bidding," ASPE Columbia Pacific Chapter, June 18, 2013
- "2013 Oregon Legislative Update," DBIA NW Oregon Chapter 54, June 11, 2013

Sean C. Gay

- "The Evolving World of Construction Defects," The Seminar Group, May 16, 2013
- "Oregon Construction Law," The Seminar Group, Sept. 22, 2011; Sept. 20, 2012; Sept. 26, 2013; Sept. 25, 2014
- "Minimizing Engineering Liability Exposure," HalfMoon Seminars, Feb. 29, 2012
- "Contract Provisions Relating to Delay," CMAA, June 21, 2011
- "Public Contracting for Construction - A Survival Guide for Oregon Public Agencies," Stoel Rives LLP, Mar. 3, 2011
- "Avoiding Construction Defects: Before, During and After the Project," Stoel Rives LLP, Feb. 28, 2011
- "Ethics in Construction: Avoiding False Claims Liability," Stoel Rives LLP, Mar. 7, 2008
- "Tricks, Traps and Ploys Used in Construction Scheduling in Oregon," Lorman Education Services, Jan. 16, 2006, Jan. 24, 2007, Jan. 24, 2008
- "AIA Contracts," Lorman Education Services, July 19, 2006, Dec. 6, 2007
- "Understanding the Construction Process from the Developer Perspective in Oregon," Lorman Education Services, Nov. 1, 2006

Publications

Treatises

- *State-by-State Guide to Construction Contracts and Claims* (coauthor), 2005, Supp. 2006-2012
- *Fifty State Construction Lien and Bond Law* (coauthor), Supp. 2006-2012
- "Client Strategies for Working with Construction Firms," Thomson/Aspatore, 2008
- "Subcontractor's Entitlement to Payment When the Owner Fails to Make Payment," *Construction Law Handbook*, Supp. 2005-2006

Continuing Legal Education Materials

- "Federal Procurements" (coauthor), *Oregon Construction Law*, 2011
- "Doing Business with the Government" (coauthor), *Advising Oregon Businesses*, Supp. 2009

Trade Publications

- "10 Important Termination Considerations: Contracting Parties Should Carefully Evaluate Contributing Factors Before Making High-Risk Decisions," *Daily Journal of Commerce*, Feb. 20, 2015
- "Legal Formalities in Contracts Can Be Perilous Pitfalls," *Daily Journal of Commerce*, Oct. 2014
- "The Importance of Project Documentation," *Daily Journal of Commerce*, Nov. 2013
- "Good Project Site Agreements Make Good Neighbors," *Daily Journal of Commerce*, Aug. 2012
- "Five Simple Rules to Protect Personal Assets," *Daily Journal of Commerce*, Feb. 2012
- "A Crash Course in Lien Releases," *Daily Journal of Commerce*, Aug. 18, 2011

Sean C. Gay

- "Professional Liability Insurance for Contractors Often Overlooked," *Daily Journal of Commerce*, Feb. 17, 2011
- "Payment Bond Presents Hidden Risk for Contractors," *Daily Journal of Commerce*, Aug. 19, 2010
- "Bid Solicitations 101," *Daily Journal of Commerce*, Feb. 18, 2010
- "Think Twice Before Deleting That E-Mail," *Daily Journal of Commerce*, Oct. 15, 2009
- "Getting Paid is Always a Priority," *Daily Journal of Commerce*, Feb. 20, 2009
- "Examining Fraud and Public Contracting," *Daily Journal of Commerce*, June 20, 2008 *Law Reviews*
 - "Provisions Providing for Early Accrual of Statute of Limitations Held Inapplicable," published by the ABA in *Construction Litigation: American Bar Association Section of Litigation*, July 16, 2014
 - "Contractor Not Entitled to Setoff Costs of Repairing Subcontractor's Defective Work," published by the ABA in *Construction Litigation: American Bar Association Section of Litigation*, January 17, 2014
 - "Declaratory Relief and Sovereign Immunity in Oregon: Can Someone Tell Me If I Turned Square Corners?" *Willamette Law Review*, 2004

Civic Activities

- Member and Secretary, Board of Directors, Architecture Foundation of Oregon
- Former Member, Board of Directors, March of Dimes, Greater Oregon Chapter
- Stoel Rives LLP Pro Bono Night Clinic

Bart W. Reed

Experience

Bart W. Reed is Of Counsel in the Seattle office and practices with the firm's Real Estate and Construction group. With extensive experience in complex commercial and construction law, multistate litigation and ADR (representing clients in 28 states), Bart focuses his practice on construction and design issues and disputes, representing owners, developers, contractors, subcontractors, design professionals and sureties, in diverse matters on both public and private projects. His experience covers a wide range of issues affecting design and construction clients, including contract drafting/negotiation, non-payment and surety claims, construction liens and payment bond claims, design disputes, construction defects, and scheduling issues in the defense and prosecution of delay/impact claims.

Prior to joining Stoel Rives, Bart was a Partner and Shareholder at Hendrick Phillips Salzman & Flatt, PC, 2003-2012; an Associate at Moore Ingram Johnson & Steele, LLP, 2000-2003; a Summer Associate for the Litigation Department of Moore Ingram Johnson & Steel, LLP, 1999; and a Summer Associate for the Corporate/Tax Department of Moore Ingram Johnson & Steele, LLP, 1998.

Representative Work

Design and Construction Contract Drafting

- Assisted owners, developers, design professionals, contractors, subcontractors and suppliers in the review, formation and negotiation of contract documents, with specific emphasis on risk mitigation and allocation, for various private projects, including condominiums, apartments, low-income housing developments, and commercial and industrial facilities.

Private Construction Litigation

- Successfully defended large regional civil engineering firm and favorably resolved multimillion-dollar design defect dispute regarding civil and infiltration design issues on industrial facility in Everett, Washington.
- Assisted general contractor in defense of multiple condominium defect claims and facilitated settlement and resolution of multimillion-dollar construction and design-related disputes between homeowners associations and project developers.
- Aided owner of industrial facility in achieving favorable settlement of additional compensation claims for delay and extra and changed work asserted by mechanical contractor, emanating from emergency work performed on owner's canola-processing plant in Minnesota.



Of Counsel

Seattle, WA
(206) 386-7568 direct
(206) 386-7500 fax

bart.reed@stoel.com

Education

- Mercer University Walter F. George School of Law, J.D., 2000
- University of Georgia, B.A., 1996, with honors
Presidential Scholar
- Oxford University, Jesus College, 1994, with honors

Admissions

- Georgia
- Washington
- U.S. District Court for the Northern District of Georgia

Bart W. Reed

- Successfully defended major national engineering firm as primary outside counsel in protracted multiparty case in Tennessee involving \$24 million dispute arising from sinkhole activity on construction site of Fortune 500 pharmaceutical corporation's consolidated network distribution center. Case involved complex civil, structural and geotechnical engineering issues. Prevailed on motion to compel production of important post-construction and pre-litigation remediation geotechnical report from owner and, after hard-fought discovery and motion practice, achieved extremely favorable settlement (less than 4% of total hard-cost claim).
- Successfully defended real estate developer in Cobb County, Georgia in multimillion-dollar construction defect and professional negligence case where plaintiffs alleged injuries arising from significant water infiltration and mold infestation.
- Prosecuted and defended multiple large-dollar claims on behalf of large Chicago-based general contractor relative to major infrastructure projects in the Southeast, including recent summary judgment award and settlement achieved (for disposition of multimillion-dollar claims from trade subcontractor on Alabama project) during appeal by subcontractor arising from successful state licensing and registration defense.
- Represented national architectural firm in case regarding multiple design and payment disputes and other contractual matters emanating from school projects in Atlanta, Georgia and achieved favorable disposition and monetary settlement of case during discovery phase of litigation.
- Facilitated resolution of numerous wage and hour claims arising from multiple projects for a large Washington general contractor and a Washington real estate developer.

Public Construction Litigation and Procurement Law

- Named Special Deputy Prosecuting Attorney for King County, Washington and negotiated favorable settlement of various design, payment and public retainage claims between County and general contractor on Brightwater Conveyance Project.
- Prevailed in obtaining an award for full recovery of damages for developer client in Contract Disputes Act claim against U.S. Postal Service arising from multiple ground leases relating to properties in Tukwila, Washington.
- Represented and defended major design services firm against design claims between public owner and general contractor on a water/wastewater treatment facility in King County, Washington.
- Defended national engineering firm and achieved favorable settlement of claims asserted by local Washington municipality concerning project administration and management services rendered on a roadway improvement project.
- Defended and prosecuted claims on behalf of multinational Canadian-based general contractor in connection with local county/state prison project. Successful mediation presentation resulted in favorable defense against county owner's assertion of liquidated damages and claims for withheld retainage and back-charges associated with alleged defects in facility's various commercial flooring systems. Obtained large monetary settlement amount from owner through third-party actions against multiple flooring subcontractors.
- Successfully handled multiple breach of contract, delay, labor inefficiency, impact, change order and payment claims for Division 17 finish-trade contractors (specializing in electronic security systems and related components) in connection with various state and county prison, courthouse and other public institution projects throughout the country, including California, Georgia, Kentucky, Maryland and Texas.

Bart W. Reed

- Assisted multiple general contractor and subcontractor clients in their respective protests of competitive bids, as well as RFPs and RFQs, on projects throughout the nation, with most recent achievement involving local civil site-work and underground utility contractor obtaining multimillion-dollar project in connection with high-profile Atlanta Beltline Project.
- Prepared, submitted and prosecuted claims and cases before various Boards of Contract Appeal and prevailed on direct and indirect cost claims, including impact, delay, labor inefficiency and change order claims, for large national electrical trade contractor.

Surety Law

- Prevailed on numerous Miller Act and "Little Miller Act" claims throughout the country, along with defense and prosecution of performance and bad-faith claims against and on behalf of large construction sureties issuing payment and performance bonds for state and federal projects.
- Defended and prosecuted for and on behalf of major national surety on performance bond claims relating to project completion and post-termination issues of contractor/principal arising from high-profile construction projects.

Appellate Practice

- *Dalton Paving & Constr., Inc. v. S. Green Constr. of Ga., Inc.*, 643 S.E.2d 754 (Ga. Ct. App. 2007) - Received favorable dispositive ruling for commercial developer and builder, affirming and reversing decision of trial court, on cases before the Georgia Court of Appeals involving appeal of arbitration award by subcontractor in dispute with general contractor and other related entities.
- *ESI Cos v. Ray Bell Constr. Co.*, No. 2008-CA-001756-MR, 2009 WL 4060478 (Ky. Ct. App. Nov. 25, 2009) - Overturned Tennessee Court of Appeals opinion by arguing before the Kentucky Court of Appeals, after transfer of case to Kentucky, and prevailed on collateral estoppel issues emanating from large delay claim of Memphis, Tennessee-based security electronics contractor on prison project.
- *Hipes & Norton, P.C. v. Pye Auto. Sales of Chattanooga, Inc.*, 562 S.E.2d 729 (Ga. Ct. App. 2002) - Prevailed on appeal by overturning a trial court's order denying an award of attorneys' fees for a law firm client.

Professional Honors and Activities

- Listed among *Rising Stars* (Construction Litigation), *Washington Super Lawyers*®, 2013-2014
- Member of one of only 12 firms nationwide ranked Tier 1 for Construction Law by *U.S. News - Best Lawyers*® "Best Law Firms" since the survey's inception
- U.S. Green Building Council/Green Building Certification Institute
 - Accredited as a Leadership in Energy and Environmental Design Accredited Professional (LEED AP)
 - LEED AP Subspecialty: Building Design and Construction
- Associated Builders and Contractors, Georgia Chapter, 2005-2012
- Association of General Contractors, Georgia Chapter, Young Leaders Program, 2005-2012

Bart W. Reed

- American Bar Association, Construction Law Forum
- Washington State Bar Association Construction Law Section Council Member

Presentations

- "Washington Construction Liens: Key Considerations for Owners," Washington State Bar Association Annual Spring Real Estate Update, Seattle, Washington, April 16, 2015
- "Tips and Traps in Construction Risk Management: Key Contract Considerations for Owners," Northwest Construction Consumer Council (NWCCC), Seattle, Washington, September 24, 2014
- "Don't 'Lien' on Me: Managing Lien Risks for Owners and Lenders to Get the Deal Closed," Stoel Rives LLP and First American Title Insurance Company, Seattle, Washington, July 15, 2014
- "The Construction Lien in Washington: Key Considerations for Owners," Stoel Rives LLP, Seattle, Washington, June 4, 2014
- "Getting Paid: Tricks and Traps for the Unwary When Utilizing Georgia Lien Law" and "Georgia Lien Law: Using the Sword and Shield Effectively," Lorman Seminars, Atlanta and Savannah, Georgia, 2009-2011
- "It's Not Easy Being GREEN: Issues and Risks to Consider When Participating on LEED or Other Green Construction Projects," Lunch and Learn – in house presentations at Hendrick Phillips Salzman & Flatt, PC, Atlanta, Georgia, September/October 2010
- "Brave New World of Public Contracting: Going Where the Money Is (or May Be) – and How to Find It!!" Associated Builders & Contractors of Georgia, Inc., Atlanta, Georgia, 2009
- "Something Old/Something New: Tracking Substantive Changes in the 2007 AIA Contract Documents and Other Standard Form Agreements," Construction Law Expo, Georgia World Congress Center, Atlanta, Georgia, May 2008

Publications

- "There Is a Darker Shade of Green," *Daily Journal of Commerce*, June 18, 2014
- "The Construction Lien in Washington: A Legal Analysis for the Construction Industry" (coauthor), Stoel Rives LLP, 2014 Edition
- "Pay Attention to Your Contract Terms and Scope - Recent Washington Supreme Court Decision Reshapes Independent Duty Doctrine," Stoel Rives "Ahead of Schedule" Blog, December 2013
- "LEED Certification Challenges: The Future of LEED-igation?" *Daily Journal of Commerce*, October 2013. Also published by *Idaho Business Journal*, November 4, 2013
- "Should Design Professionals in Washington File a Pre-Claim Notice to Protect Lien Rights? Yes!" Stoel Rives "Ahead of Schedule" Blog, July 2013
- "Is Your Contractual Arbitration Clause 'Unconscionable' and Thus Unenforceable?" Stoel Rives "Ahead of Schedule" Blog, May 2013
- "LEED-igation: Fact or Fiction?" *Daily Journal of Commerce*, February 2013
- "Why You Should Pay Attention to Indemnity Clauses in Construction Contracts," *Daily Journal of Commerce*, June 2012
- "State Construction Projects in Georgia Go Green," *Frameworks*, a Construction Suppliers Association Publication, August 2011

Bart W. Reed

- "LEED-igation 101: Understanding and Mitigating the Legal Risks Unique to Green Construction Projects," *Professional Roofing*, June 2010
- "Avoid Unintended Exposure: Issues to Consider in Limiting the Risks Associated with Solar Panel Installation," *Georgia Contractor*, November/December 2009

Civic Activities

- Contributing Volunteer for numerous Habitat for Humanity projects
- Pro-Bono Volunteer for the Bainbridge Island Museum of Art
- Actively involved in Bainbridge Island Little League
- Member and Supporter, Washington Trails Association and The Mountaineers Club
- Vice President of North Springs Homeowners Association Executive Committee, North Springs Neighborhood, Sandy Springs, Georgia (2011-2012)
- Member and Pro-Bono Volunteer, Cobb County Justice Foundation (2000-2003)