

This file is distributed under a [Creative Commons \(CC\) license](#). This doesn't replace copyright -- which remains undivided with **Ron Ciotti and Brian Perlberg** -- but it makes the terms more flexible. The IGLC community may use this file for their personal use. However, this use must be made within the terms of [the CC license "Attribution -- NonCommercial -- NoDerivative."](#)

This Creative Commons license allows you to reproduce, distribute, display, or perform publicly this file as long as you follow these guidelines:

- Attribution: You explicitly reference **Ciotti and Perlberg** as the original source of the materials. Please follow the Attribution Guidelines below when referencing this file.
- NonCommercial: You cannot use this file (or any parts of it) for commercial purposes.
- NoDerivative Works: You cannot alter this file in any way (edit, remix, cut, etc). These conditions can be modified only by explicit permission of the copyright holder (i.e., **Ciotti and Perlberg**). The complete text of the license can be seen on the Creative Commons (CC) website.

ATTRIBUTION GUIDELINES

Ciotti, R., and Perlberg, B. (2016). **"And Now, a Word from Our Attorneys – Getting Attorneys to be Ladders, not Walls"** *Advances in Lean Design & Construction Practice from New England, across the US, and Abroad* full-day event, IGLC-24, July 19, Boston, USA.

And Now, a Word from Our Attorneys – Getting Attorneys to be Ladders, not Walls



Ron Ciotti, Esq.
Construction Attorney
Partner - Hinckley Allen
28 State Street, Boston, MA 02109-1775
617-345-9000
rciotti@hinckleyallen.com



Brian Perlberg, Esq.
AGC Sr. Counsel
ConsensusDocs' Executive Director & Sr. Counsel
bperlberg@ConsensusDocs.org

Does Your Contract Facilitate Success?

“It is ironic that the one industry in the country which more than all others depends upon coordination, cooperation and teamwork among multiple participants should be the country’s most adversarial industry.”

- Construction Industry Institute



ConsensusDocs™



Contractually Speaking

- Are LEAN requirements in your contract?
- Should they be?
- Building the Foundation/Setting the Expectation
 - Common understanding

PURE IPD Vs IPDish?

- There is no one answer!
 - But, there is a right and wrong answer depending on the project!
 - You can't fit a square peg in a round hole!
 - Understand what you are working with!



Is IPD & Lean the Solution?



BOSTON MEDICAL CENTER PURE IPD and “IPDish”

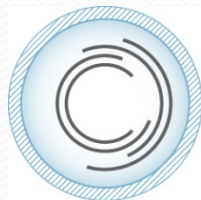


Is Your Lawyer the Wall or a Ladder?

- When to get a Lawyer Involved?
- Do you have the Right Kind of Lawyer to Facilitate?
- Are you using your lawyer the right way?
- When should a Lawyer Raise a flag?
 - What is the easiest answer for a lawyer?
- Macro Project Risk Management
- Project Counsel

ConsensusDocs 300- A Different Way

Owner, Constructor & Designer All Sign the Same Contract



ConsensusDocs™

Questions



Ron Ciotti, Esq.
Construction Attorney
Partner - Hinckley Allen
28 State Street, Boston, MA 02109-1775
617-345-9000
rciotti@hinckleyallen.com



Brian Perlberg, Esq.
AGC Sr. Counsel
ConsensusDocs' Executive Director & Sr. Counsel
bperlberg@ConsensusDocs.org



BAD Contracts → Bad Results

- Study EXCULPATORY CLAUSES INCREASE PRICE 8-20%
 - Site Conditions
 - Delays
 - Liquidated Damages
 - Indemnification
 - Sufficiency of Contract Docs
- CII Study on contracts
 - Unnecessary Risk Contingencies
 - Best Contractors Seek the Best Owners
 - Worse contracts get worse results.

What is IPD?

Shared Pain and Gain

Shared Gain

- ✓ Cost
- ✓ Quality
- ✓ Safety
- ✓ Schedule
- ✓ Innovation
- ✓ Reliability
- ✓ Teamwork



Shared Pain

- Losses
- Possible lost fees
- Lost future work

- No GMP
- Target Cost Estimate
- Target Value Design
 - ✓ value,
 - ✓ cost,
 - ✓ schedule &
 - ✓ constructability