

BIM, The Law, and The Revolution In Project Delivery

Mobius LA June 25, 2009

Part 2: Integrated Project Delivery

Introduction

Doug Childers, Morris Architects

Legal issues facing the IPD revolution

Robert H. Shaffer, Jr., Zetlin & De Chiara

IPD: A Contractor's Perspective

Dave Seastrom, DPR Construction

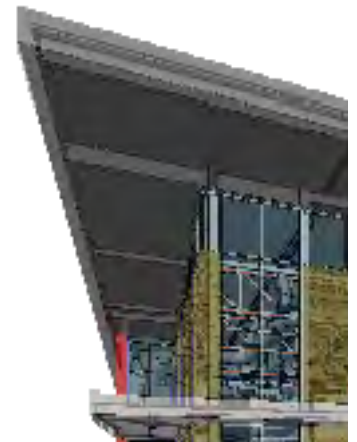
Questions and Answers

Robert H. Shaffer, Jr., Zetlin & De Chiara

Dave Seastrom, DPR Construction

Brian Cornelius, Caruso Affiliated

Christof Spieler, Morris Architects





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Learning Objectives

- Participants will be able to define IPD.
- Participants will be able to identify the benefits of using IPD.
- Participants will be able to assess the drawbacks to the IPD process.
- Participants will be able to appraise the current state of IPD in the industry.

The Panelists:

- Robert H. Shaffer, Jr., Partner, Zetlin & De Chiara
- Dave Seastrom, Regional Manager, DPR Construction
- Brian Cornelius, VP Development, Caruso Affiliated
- Christof Spieler, Director of Technology and Innovation,
Morris Architects

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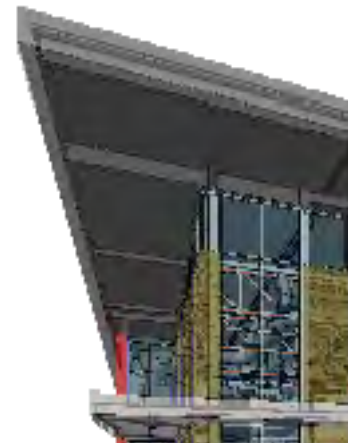
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Integrated Project Delivery: Introduction

Doug Childers

Principal, Urban Studio

MORRIS
ARCHITECTS



IPD – Reinventing the Relationship



Eiffel Tower: Public-Private Partnership - Design / Build / Operate / Maintain

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Contract Goals: Balance Risk and Reward



Golden Gate Bridge

Contract Goals: Fairness



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Project Objective: Something More



Notre Dame (Wikipedia)

Flexibility to Collaborate



Frank Lloyd Wright (Frank Scherschel, Wisconsin Historical Society)

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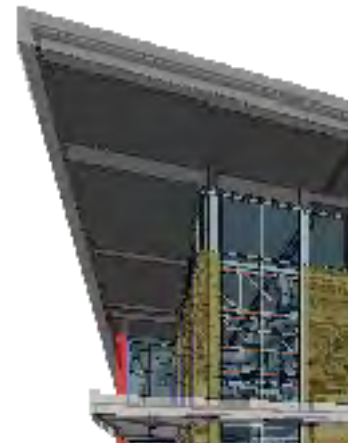
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Legal issues facing the IPD revolution

Robert H. Shaffer, Jr.

Partner

ZETLIN & DE CHIARA

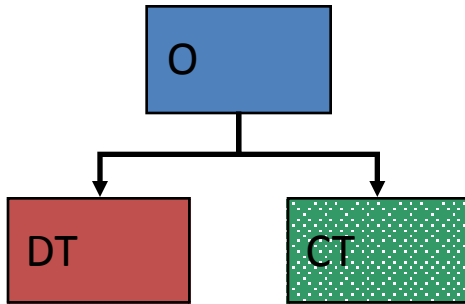


AIA California Council

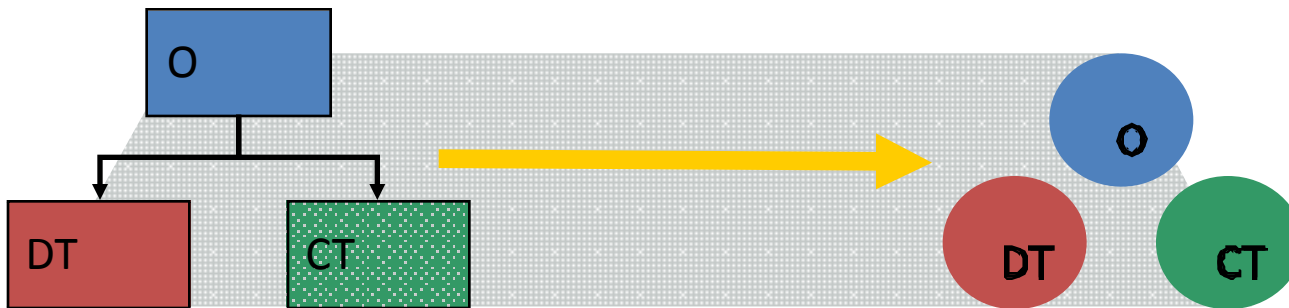
IPD Definition

“IPD is a project delivery approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the owner, reduce waste and maximize efficiency through all phases of design, fabrication and construction.”

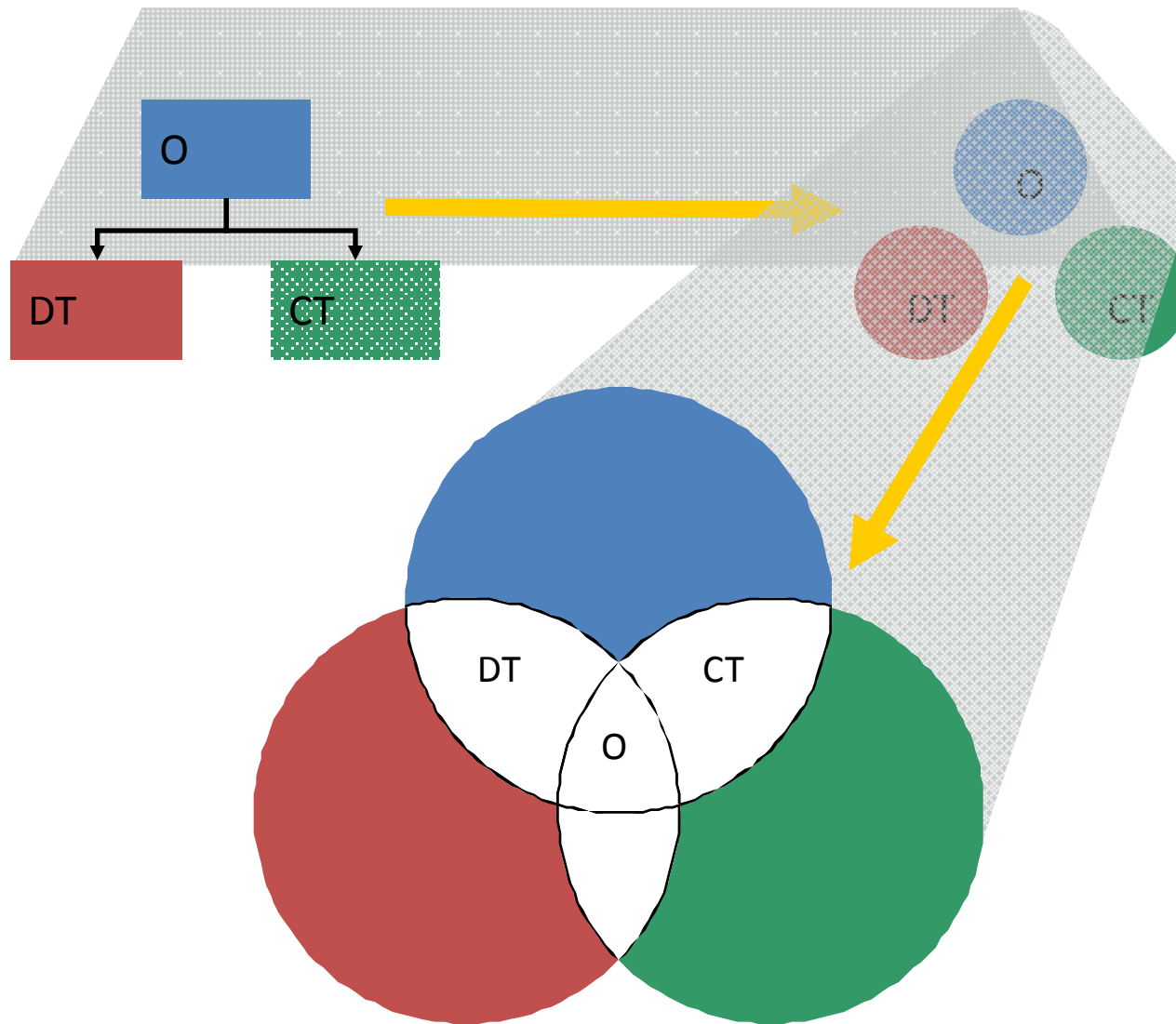
IPD principles can be applied to a variety of contractual arrangements and IPD teams will usually include members well beyond the basic triad of owner, architect, and contractor. At a minimum, though, an integrated project usually includes highly effective collaboration between the owner, the architect, and the general contractor ultimately responsible for construction of the project, from early design through project handover.



Traditional construction project delivery system



With the advent of BIM technology, there is an improvement in the delivery systems for construction projects.



In the future, IPD promises, through the use of an integrated Project delivery system, to bring construction efficiency into the 21st century.

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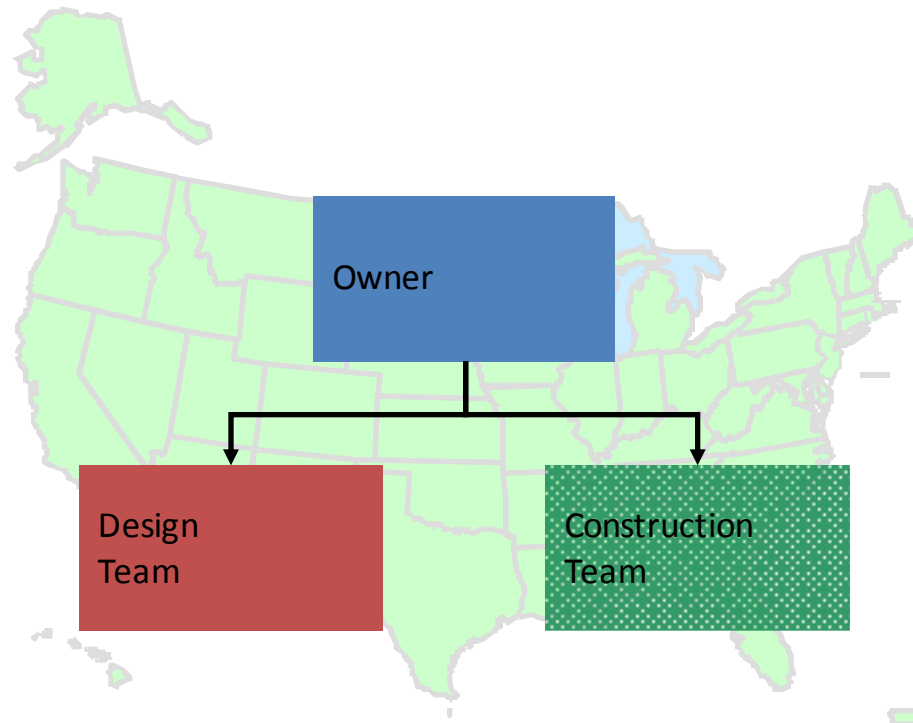
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Legal Analysis of Integrated Project Delivery (IPD) as We Understand It Today

- General
- The purpose of the legal analysis is to analyze and assess participants' obligations, responsibilities and potential liabilities which flow from the new relationships and tasks contemplated by the IPD method of project design, construction and delivery.
- Initially, as with all new relationships, it will take a period of time before many of the legal ramifications of this new structure will be understood.

Historical Legal Framework for Classic Project Delivery, Defined As:

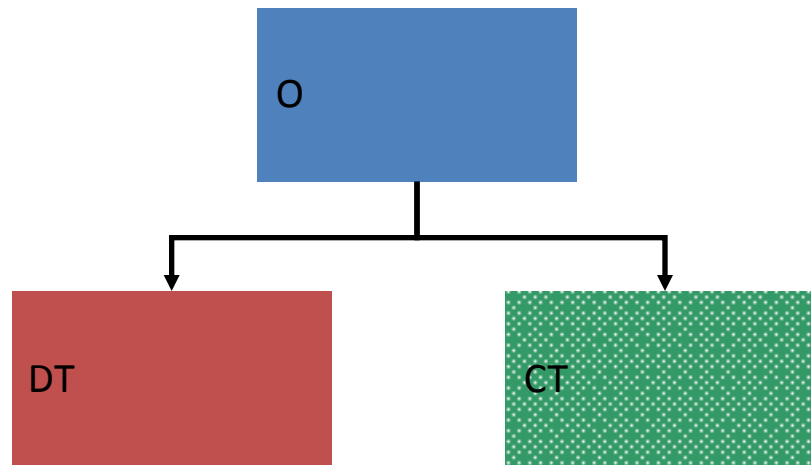
- Classic tripartite structure is legally well-defined throughout U.S.A. and is relatively unchanged from the 1950s.



Historical Legal Framework for Classic Project Delivery, Defined As:

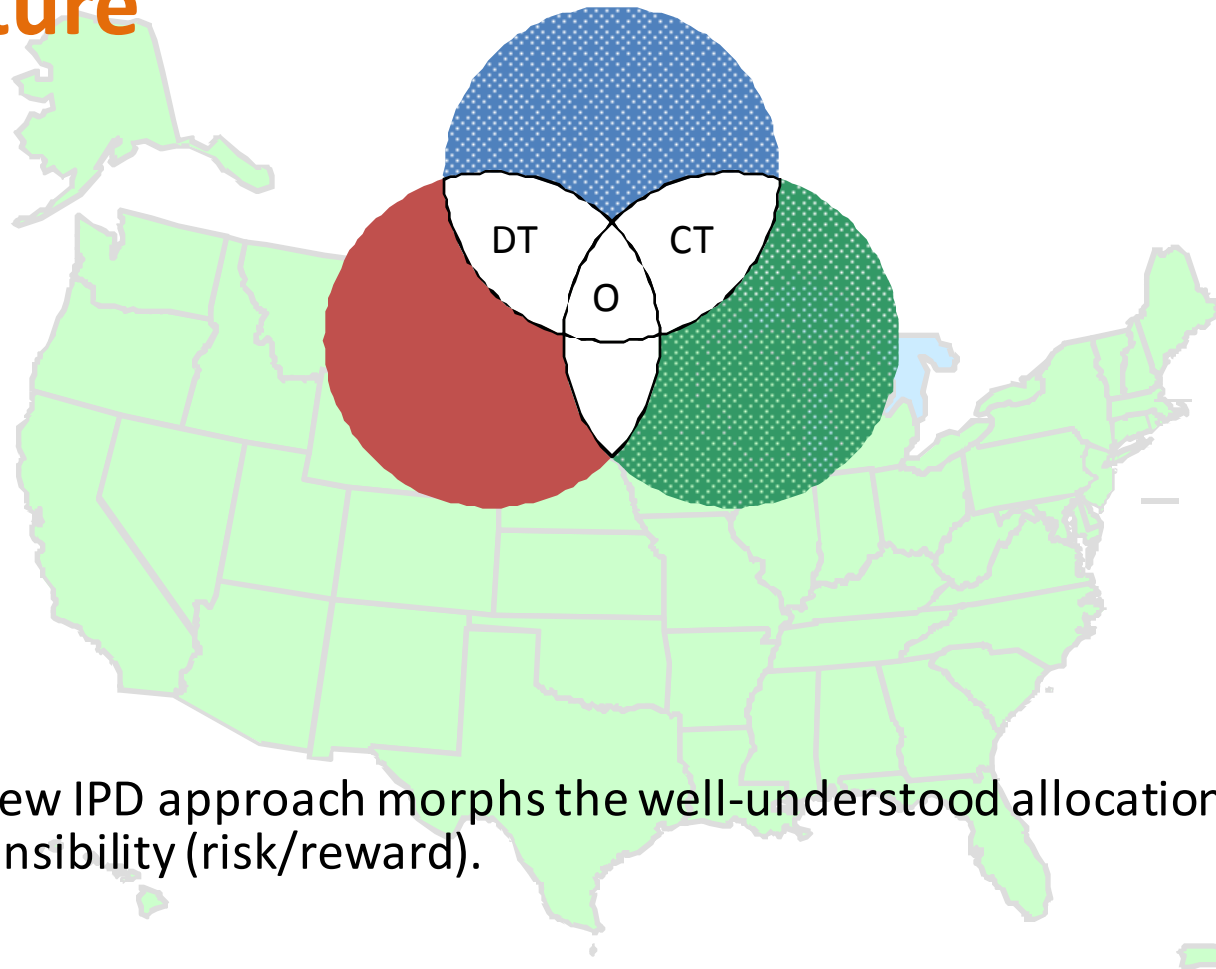
- Most states strictly adhere to a separation between Owner (“O”), Design Team (“DT”) and Construction Team (“CT”).
- Building codes and licensing laws have been framed based upon clearly-defined differences among Owner, Design Team and Construction Team.

Risk/Reward Traditional Tripartite Structure



- The allocation of risk/reward is well-understood and there is well-established body of law which defines each party's obligations to the other. These vary significantly state-by-state.
 - The DT's compensation generally consists of:
 - Basic service fees; and
 - Additional service fees.
 - The CT's compensation generally consists of:
 - Fees for general conditions;
 - Fees for overhead; and
 - Fees for profit.

Risk/Reward Traditional Tripartite Structure

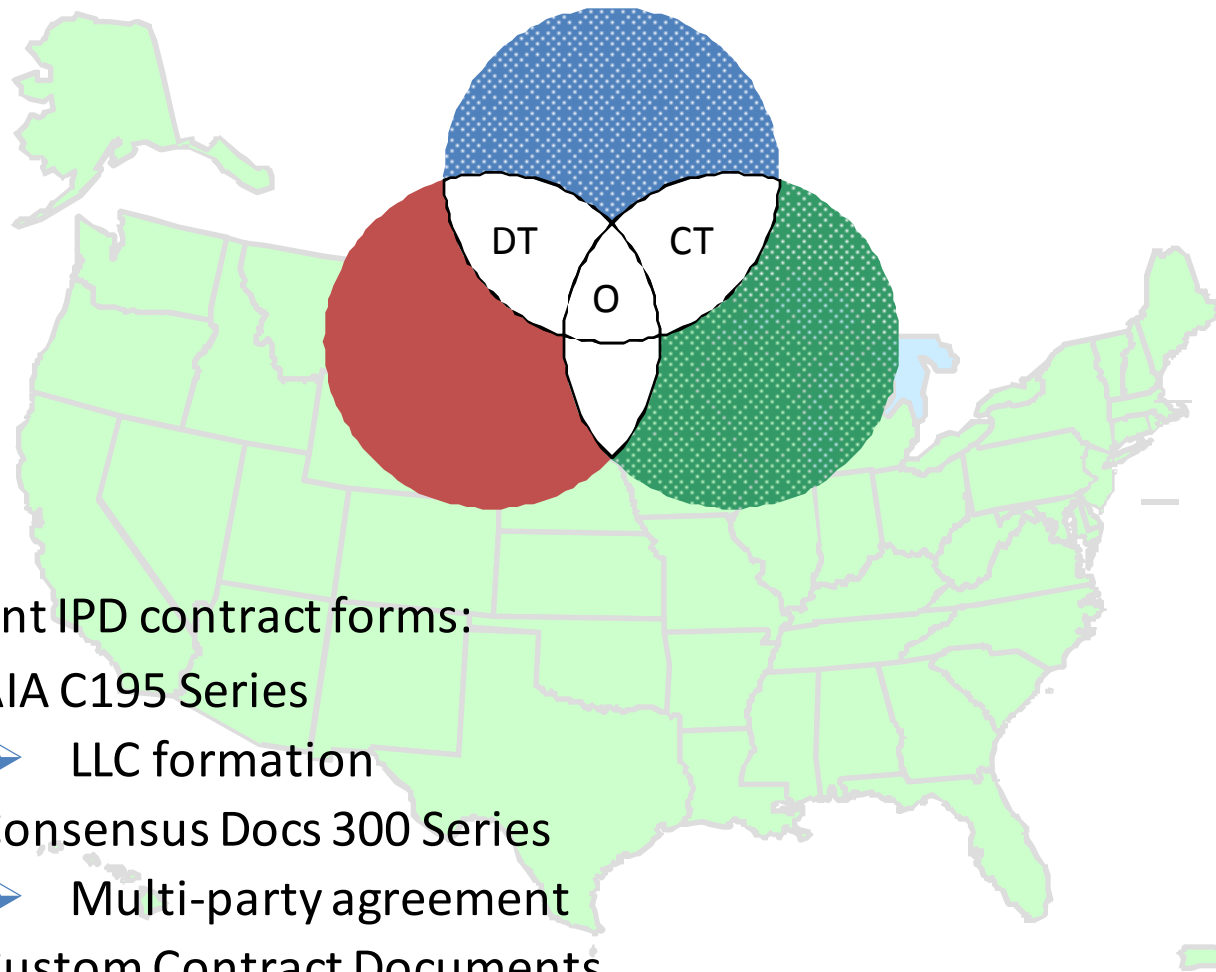


- The new IPD approach morphs the well-understood allocations of responsibility (risk/reward).

Fundamental Issues of IPD Include:

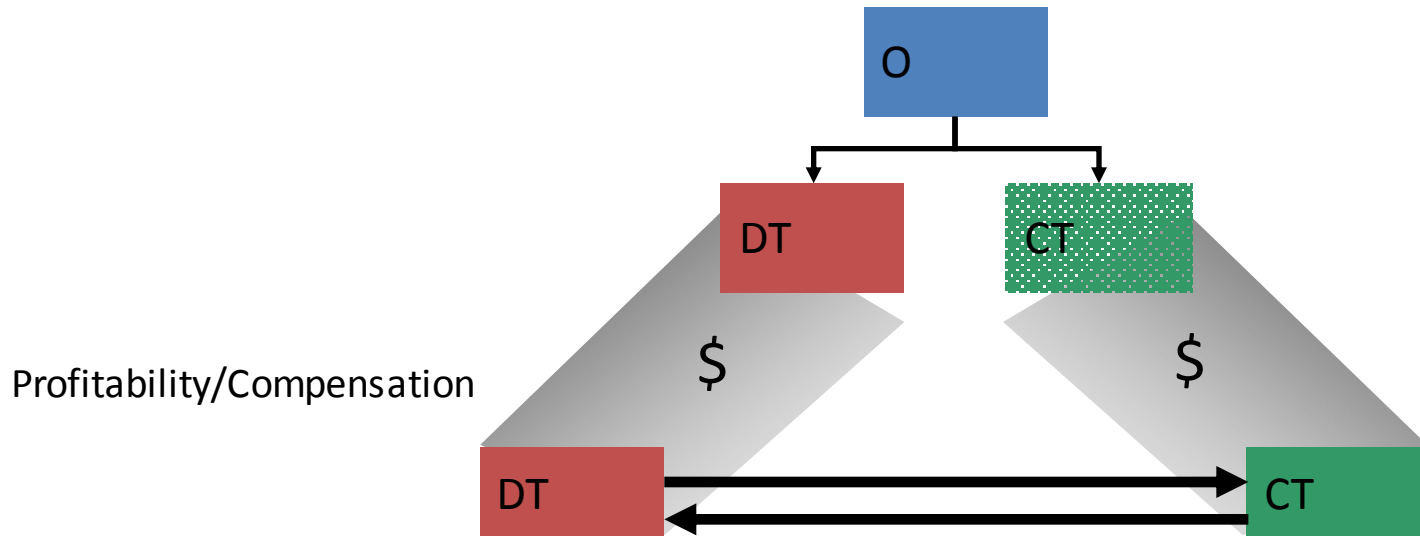
- Mutual respect and trust
- Mutual risk and reward
- Collaborative innovation and decision making
- Early involvement of all key participants
- Open and enhanced communication

Risk/Reward New IPD Approach



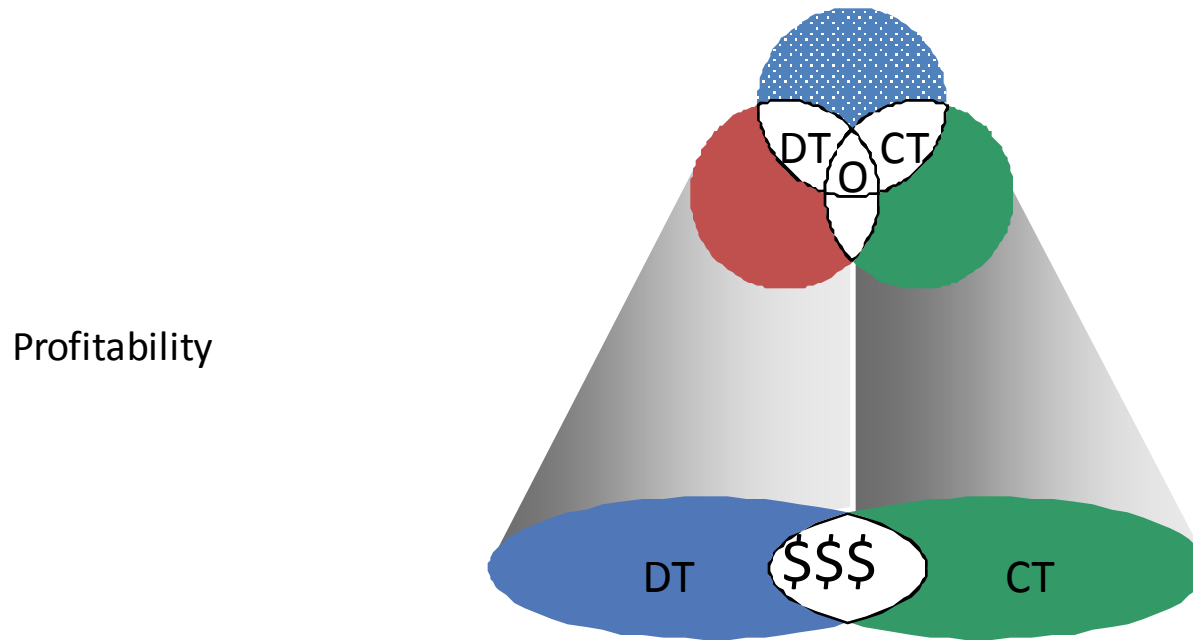
- Current IPD contract forms:
 - AIA C195 Series
 - LLC formation
 - Consensus Docs 300 Series
 - Multi-party agreement
 - Custom Contract Documents

The Traditional Tripartite Approach



- Under the traditional approach, the profitability of the DT and CT are unrelated. In fact, often the profitability of each could only be adversely affected by the actions of the other.

The New IPD Approach



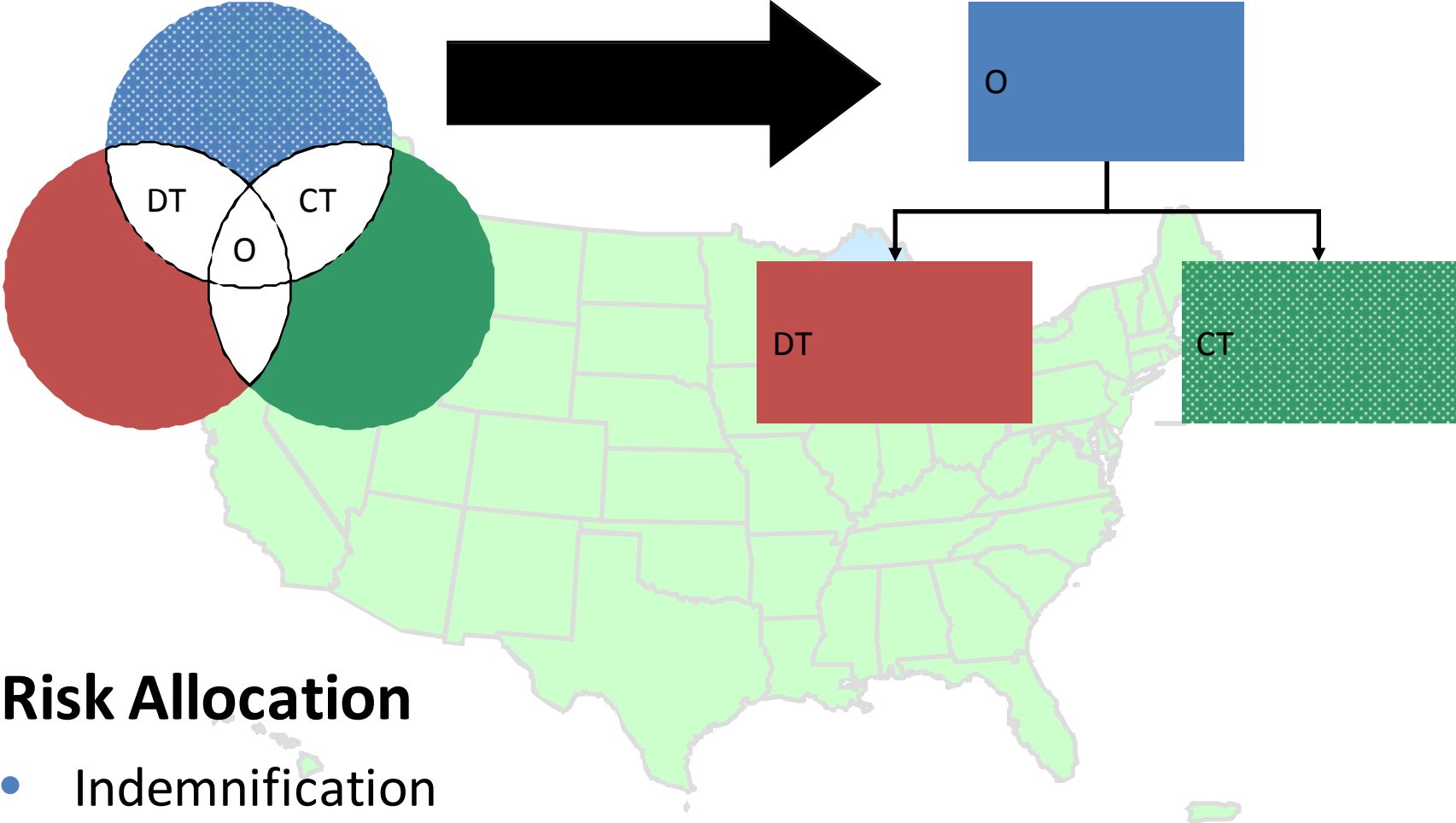
- Under the IPD approach, profitability is an interrelated and shared risk reward between the DT and CT.
- The concept is to create a scenario where neither the DT nor the CT can benefit due to the failure of the other to perform.

Risk/Reward New IPD Approach

Risk Allocation

- Waiver of damages

Risk/Reward New IPD Approach



The New IPD Approach

Risk Allocation

Insurability Issues

- From a legal point of view, the issue is to make sure that the IPD approach is covered under the professional's errors and omissions policies of the DTs.

The New IPD Approach

Insurability Issues

- The general advice in this regard is straightforward. You must have your lawyers and brokers carefully review your IPD agreements to determine whether there is language or whether relationships are created which will adversely affect your insurance.
- Potential issues for DTs
 - You have contractually taken on liability for contractors' work (shop drawings) which may fall outside the scope of your insurance.
 - You have actively engaged in non-professional services which are outside the scope of your insurance.
 - In states that don't allow the A/Es to share design responsibility with non-licensed professionals, participation in the IPD structure could be deemed an illegal act, which could render your e & o insurance null and void.

The New IPD Approach

Dispute Resolution:

- To the extent there are disagreements about liability for lost profits, or the amount of lost profits, there should be an expedited means of resolving these claims.

Bonding Issues:

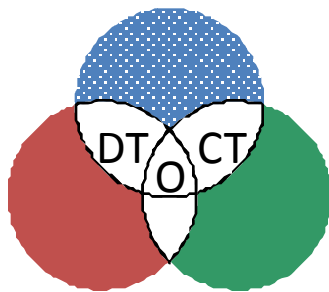
- The same issues that the A/Es face with their insurance must be addressed by the bonding companies for the CTs.
- As part of their underwriting, bonding companies are likely to be rating the A/Es on a Project as part of their due diligence.

Copyright Issues:

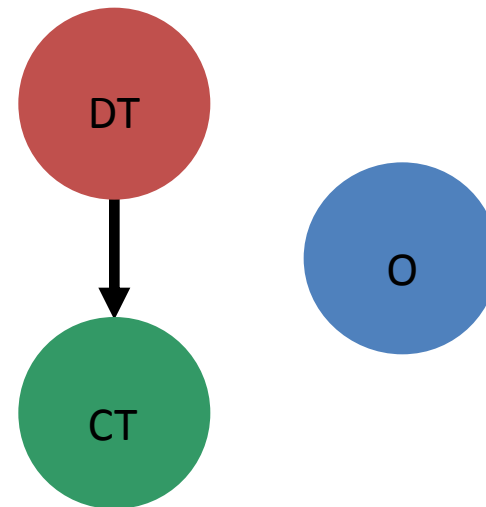
- The issue of ownership of Copyright for design has always been an important issue for A/Es.
- To the extent that contractors are contributing to the design there must be language addressing ownership.

The New IPD Approach

IPD Design Structure



Licensing Law
Mandated Design Structure



Licensing Issues

- How will the IPD agreements work in states that don't permit CT's and O's to be involved in design?
- What entities can legally contract to provide design services?
 - This varies State by State

Thank you for your time!

This concludes the American Institute of Architects
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