

RHarper Consulting Update



Introducing the Initial Decision Maker

The 2007 AIA documents have added a new player in our project construction teams called the Initial Decision Maker (IDM). In the 2007 documents, the IDM replaces the architect as the initial decision maker on claims and provides a new party to review and issue a decision on claims.

In placing the IDM language into the 2007 documents, the AIA has responded to long expressed concerns from general contractors that the architect has an inherent conflict of interest in claim situations since the owner pays the architect's fees and the architect may try to protect the ongoing relationship. In addition, the contractors often claim the architect's bias also extends to potential errors in their documents.

The duties and responsibilities of the IDM are spelled out in paragraph 15.2 in the AIA 201 General Conditions. In summary, the IDM provides initial review of claims as they arise then may; request additional information, suggest a compromise solution, approve the claim, reject the claim, or declare the IDM cannot appropriately rule on the claim.

In effect, the IDM functions as an in-process neutral. The IDM's decisions are final and binding. If the parties choose to pursue the claim further, the documents direct the dispute to mediation. If mediation is not successful the dispute proceeds to binding dispute resolution.

Choosing the IDM should be a joint decision by the owner, contractor and architect. It is advisable to choose an IDM who has field experience in the type of construction to be completed and has been trained as a mediator or arbitrator. Since the specific

purpose of the IDM is to resolve disputes as early as possible, the IDM must be perceived as an "honest broker" by the parties and they must believe they are receiving a fair and unbiased decision from the IDM.

Owners and their counsel should proactively approach incorporation of the IDM into their projects. An IDM rider should be crafted to define the scope, standards, indemnification, costs as well as administration of the IDM role. The documents should also address coordination of the IDM's activities with the architect to avoid duplication and conflict of duties.

As with all new concepts, the role of the IDM has some controversy associated with it and there are many operational issues to be considered. However, the IDM concept is a great opportunity to control claims cost proactively and resolve claims early in the process with fewer resources diverted from completion of the project.

RHarper Consulting Group provides real estate consulting and neutral services. Mr. Harper is on the construction panel with the American Arbitration Association as well as listed as a civil mediator by the Tennessee Supreme Court. These credentials along with 25 years of construction experience make Mr. Harper an effective choice for IDM services.

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Mission Statement

RHarper Consulting Group strives to provide the highest level of professional expertise and service to deliver real estate services that meet our clients missions and goals.

**To learn how we can add value to your project please contact us at:
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Engagements

- Mediation consulting on a Board and senior management dispute in New Zealand
- Senior housing site analysis—Atlanta
- Strategic Alliance with Stonetrust Partners
- Core training with American Arbitration Association
- Licensed as Affiliate Real Estate Broker

For more information on arbitration, mediation and other neutral services please visit our ADR website at:
www.rharperadr.com