

AVOID THE PITFALLS IN THE ARCHITECT'S FORM CONTRACTS!

Beware the “standard” forms of agreement tendered by your architect for construction projects. There are provisions contained in these agreements which work very much in favor of the architect and contractors and against the best interests of the project owner – that’s you!

I’m talking about waivers of subrogation and consequential damages.

The basic AIA agreement text provides that the parties “waive subrogation” for any property damage claims covered by insurance. This would be fine if you were a contractor rather than the owner of the property. This means if anyone’s property is damaged and covered by property insurance, the owner of that property will accept payment from their own insurance company and the claim will end right there. No one will be allowed to go after the contractor or architect who actually caused the damage!

Example: The architect does bad design work for the drainage around a school building addition. During construction water backs up and infiltrates the existing school building causing \$300,000.00 of damage to school equipment, including computers and furniture. In this scenario, if you signed the standard AIA documents without editing, then you and your JIF are simply out of luck. The architect and his insurance company walk away with no payment!

The standard documents also contain provisions by which the parties waive “consequential damages”. What does this mean? In our example above, if the school district had to rent substitute space and hire buses on a temporary basis while it’s’ building is repaired, there would be no recovery for these expenses because you waived them when you signed the standard AIA agreement forms. You are stuck paying these expenses out of your current expense budget and not recovering them from anyone!

Are these outcomes fair? Obviously not, because it is the school district /owner of the project who is exposed to property and consequential losses when things go bad on a construction project. The architect’s and contractors’ exposure to property and consequential losses on your project are simply not comparable to your exposure. That’s what makes these clauses unbalanced and unfair to you.

What’s the fix? Edit these clauses out of your agreements before you approve them. These clauses are not required by law and are subject to negotiation between the parties.

Where are these clauses?

In the architect’s contract:

In AIA Document B104, the Standard Form of Agreement Between Owner and Architect, you will find the subrogation waiver at paragraph 8.1.2. It should be deleted.



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Also in AIA Document B104, you will find the waiver of consequential damages at paragraph 8.1.3. This paragraph should also be deleted.

In the construction contracts:

In AIA Document A201, General Conditions of the Contract for Construction, you will find the subrogation waiver at Article 11, Section 11.3.7. This section should be deleted.

Also in AIA Document A201, you will find the waiver of consequential damages at Article 15, Section 15.1.6. This section should also be deleted.

Before your district signs any more of these “standard” agreements, please ask your Solicitor to do a comprehensive review of the standard forms to make certain you do not put your district at a disadvantage when claims arise. Feel free to pass this memo along to your Solicitor as a starting point.

You can anticipate that you will get resistance and that’s why it’s important right from the start when you are hiring your architect. Trust me, BEFORE the contract is signed is when you have more than enough leverage to get these disadvantageous provisions removed from your contract documents.

