PITFALLS OF THE STANDARD AIA CONTRACT FOR OWNERS AND DEVELOPERS

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Prior to joining Bracewell, Cris served as general counsel for a major real estate company headquartered in Fort Worth, Texas. In that position, he oversaw all of the company’s corporate, transactional and asset management legal work.

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Richard has a wide range of experience in trial work and arbitration, with an emphasis on construction litigation, intellectual property litigation, products liability litigation, real estate litigation, and other types of commercial litigation.
INTRODUCTION, BACKGROUND AND SCOPE

• American Institute of Architects (AIA) a professional organization for architects founded in 1857
• Publishes over 200 contracts and forms dating back to 1888
• 2017 A101/A102 – Standard Form of Agreement Between Owner and Contractor
• 2017 A201 – General Conditions of the Contract for Construction (most widely used form dating back to 1911)
• Both have been updated from 2007 – every ten years
• Presentation is to identify helpful points to negotiate
• Also to highlight some changes from 2007 if time permits
GENERAL ADVANTAGES OF AIA FORMS

• A101/A102 and A201 are industry standard forms
• Cover a lot of scenarios
• Based on input from numerous industry organizations
• Reduce time and expense related to negotiation
• Most widely used – terms have generally understood meanings
• Forms are thorough and flexible and can be modified
• Generally compliant with the law
GENERAL DISADVANTAGES OF AIA FORMS

• Standardized and not unique – will likely need modification
• Modifications from Contractor are not always apparent
• If carefully reviewed and negotiated, advantages outweigh disadvantages
GENERAL THOUGHTS TO AVOID PITFALLS

• Buy standard forms you can revise ($80) and run a redline of what is presented
• Good to have counsel review and comment
• Be aware of and READ the General Conditions (A201)
• Develop internal forms/provisions over time
2017 - A101/A102

AIA® Document A101™ – 2017
Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AIA® Document A102™ – 2017
Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
for the following Project:
(Name, location and detailed description)
DATE OF COMMENCEMENT

- Article 3 of A101 and Article 4 of A102
- Default is date of the Agreement
TIME OF COMPLETION

- Article 4.5 in A101 and Article 5.1.6 in A102
- The form leaves liquidated damages blank

\[ \textbf{§ 5.1.6 Liquidated damages, if any:} \\
\textit{(Insert terms and conditions for liquidated damages, if any.)} \]
RETAINAGE

• Article 5.1.7.1 in A101 and Article 12.1.8.1 in A102
• Retainage is the amount that can be withheld until the project achieves Final Completion
THE INITIAL DECISION MAKER

- Article 6.1 in A101 and Article 13.1 in A102
- The IDM is the initial arbiter of disputes
- Added in 2007 AIA forms
THE INITIAL DECISION MAKER (CONTINUED)

• A201 Article 15.2.2 describes the process
DISPUTE RESOLUTION

- Article 6.2 of A101 and Article 13.2 of A102

§ 6.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017
[ ] Litigation in a court of competent jurisdiction
[ ] Other (Specify)
TERMINATION OR SUSPENSION

• Article 7.1.1 in A101 and Article 14.1.3 in A102
• A102 provision is more detailed
• Article 2.2 - Evidence of owner’s financial arrangements
• Article 2.2.2 - Evidence of owner’s financial arrangements
• Article 2.5 - Right to stop work and carry out work
• Article 3 - Bread and butter provisions
• Article 3.18 - Indemnity
• Article 8.3 - Delays and extensions of time
• Article 9 - Payments and completion
2017 - A201

- Article 11 - Insurance
- Article 13 - Miscellaneous
- Article 14 - Termination or suspension of contract
- Article 15 - Claims and disputes
- Article 15 – Mediation
- Article 15.4.4 – Consolidation or joinder
MATERIAL CHANGES IN 2017 AIA FORMS

• Insurance and Bonds - Exhibit A
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