

Arizona Builders Alliance

Advisory Board Meeting

Legal Report

January 8, 2020

Consequential Damages Waiver

- **Standard AIA Clause (A201-2017):** § 15.1.7 The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contractor. This mutual waiver includes
 - .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management of employee productivity or of the services of such persons;
 - .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business reputation, and for loss of profit, except anticipated profit arising directly from the Work.
- **Examples of Consequential Damages:** lost profits, lost revenues, lost business opportunities, damage to business reputation, principal office overhead
- **Key Concerns:**
 - Make sure the waiver is mutual (without CD waiver you could be risking your company on a Project)
 - Make sure direct damages are defined (which parties can recover in the event of a breach), including
 - Liquidated damages
 - ~~Home office expenses related to the Project~~
 - Lost profit related to the Work (in the event of unfair termination)
 - Ensure subcontracts are consistent with prime contract CD clause
- **Other limitations of liability:**
 - Liquidated damages
 - No damages for delay