

THE 2007 AIA OWNER- ARCHITECT AGREEMENTS





Highlights of New Issues in the A201 General Conditions

- Time Limit on Claims
- Arbitration Optional
- Arbitration under the FAA
- Joinder and Consolidation
- Initial Decision Maker
- Consequential Damage Waiver
- Insurance

1997 Time Limits on Claims

Owners objected to 1997 inconsistency between O/C and O/A disputes

- A-201 - different limitation period depending on whether before or after substantial completion or after issuance of Final Certificate for payment
- B-141 - another different result depending on when Architect's services were "substantially completed"

2007 Outside Time Limit on Claims (13.7)

- Contractual repose period between contractual parties regardless of when discovered
- All claims must be filed in accordance with State law limitations period, but not more than 10 years from the Date of Substantial Completion
- Consistent with B-101
- Importance of issuance of Certificate of Substantial Completion
- Importance of all subcontractors and suppliers being bound to A-201
- Will bar the potential for Illinois 10+4 rule for contractual parties
- Warranties may be shorter or longer; may require amendment
- Meaning of “commence” claim or cause of action

Arbitration Optional

- Check the box in Agreement
- Default litigation
- Doesn't affect mediation
- Potential loss of effective remedy on smaller claims.
- 2006 AAA statistics: 40% of 4,217 claims under \$75K
- Arbitration as a valuable tool for collecting architectural fees



Arbitration Under FAA

- 13.1 provides that the Federal Arbitration Act is the applicable law
- Helps with enforcement of arbitration process
- May not help to incorporate the innovation of the Revised Uniform Arbitration Act.



Joinder and Consolidation in Arbitration

- 1997 - prohibited Architect and subs from being involuntarily joined in arbitrations
- 2007 - 15.4.4 allows Owner to join other design professionals whose contracts allow consolidation and where rules are similar
- Need for consistency among agreements

Initial Decision Maker (15.2)

- Architect by default
- Independent IDM likely to treat process more seriously
- May help settle more claims prior to mediation, arbitration or litigation
- Condition of mediation, but only before Final Payment is due
- Decision final and binding but subject to being overturned in arbitration or litigation
- Either party may, within 30 days of a decision, demand that the other party file for mediation within 60 days or have the decision become binding
- Aesthetic effect decisions no longer “final final”



Why Should Architect Care About Claims Resolution?

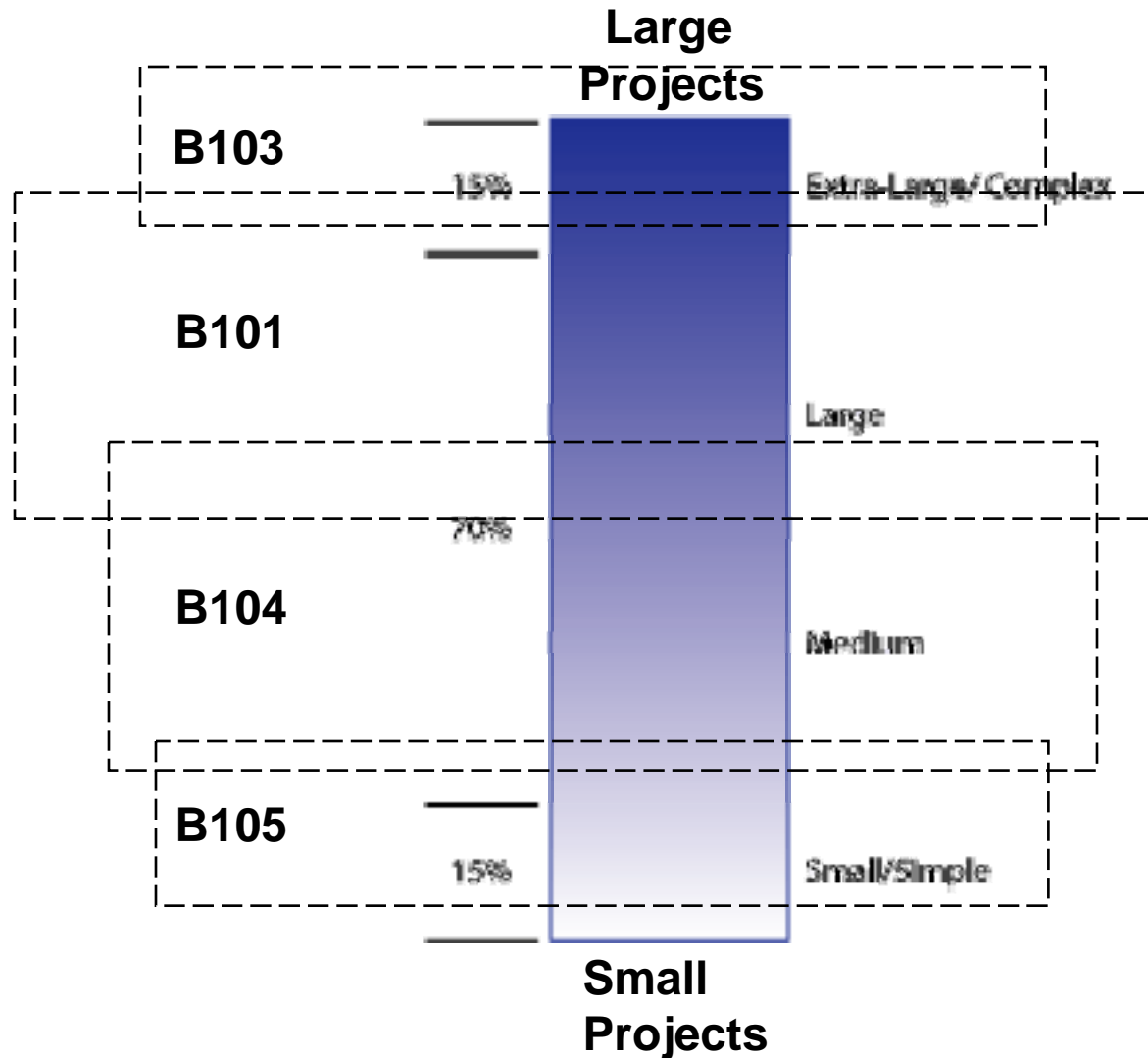
- Transactional costs of litigation high
- Owner-Contractor disputes affect Architect's relationships
- Contractor often blames Architect resulting in un-compensated assistance or defense of claims
- Architect influences the contracts terms
- Architect may be person responsible for coordination of contracts
- Independent IDM may cause early resolution



Insurance

- Architect as additional insured
- Completed operations to continue for the correction period

The Various 2007 Owner-Architect Contracts: Relationship to Project Size





B101 Issues Covered Discussing A201

- Initial Decision Maker
 - Role of the Architect
 - Use of Third Parties
- Dispute Resolution options
 - Mediation
 - Litigation/Arbitration Check-Box
 - Software “glitch”?

Return to Basic/Additional Services

- **Traditional 5 phases of Basic Services:**
 - **Schematic Design Phase**
 - **Design Development Phase**
 - **Construction Documents Phase**
 - **Bidding and Negotiating Phase**
 - **Construction Phase**
- **Description of Services:**
 - **Fixed description of services, not a menu**
 - **Clear definition of Architect's traditional services**
 - **The usual expectations for any design project**
 - **Includes "usual and customary" structural, mechanical & electrical engineering**

Two Types of Additional Services

§ 4.1 Those known at the time the Agreement is executed:

Additional Services	Responsibility <i>(Check Architect, Owner or Not Provided)</i>			Location of Service Description <i>(Section 4.1.1 below or in an exhibit attached to this document and identified below)</i>
	Architect	Owner	Not Provided	
.1 Programming				
.2 Multiple Preliminary Designs				
.3 Measured Drawings				
.4 Existing Facilities Surveys				

§ 4.2 Those that arise during the course of the Project.



Contractual Standard of Care:

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances.

Green Design

- **Basic Service:**

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

- **Additional Services:**

§ 4.1.23 Extensive environmentally responsible design

§ 4.1.24 LEED® certification

Contractual Statute of Repose - § 8.1.1:

- All claims must be filed in accordance with state law, but not later than 10 years from the date of Substantial Completion
- Parties waive claims not commenced in accordance with § 8.1.1
- § 8.1.1 mirrors A201-2007 § 13.7
- Filing an arbitration demand “tolls” the time limit (§ 8.3.2)

License Fee After Termination for Convenience

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

§ 11.9.1 If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

\$ _____.

B103 – 2007 Owner-Architect Agreement for a Large or Complex Project

Similar to B101 but modified to address nature of larger and more complex projects

Major elements:

- Owner employs Scheduling Consultant
- Owner employs Cost Consultant responsible for pricing the CD's
- Recognizes multiple bid packages/fast track scheduling
- Architect indemnifies Owner
- Detailed insurance provisions

Digital Data Protocol Exhibit – AIA Document E201-2007

- **Confidential information must be designated as confidential (needs exception for subpoena)**
- **Written notice can include electronic communications**
- **Transmitting party warrants ownership or right to use data**
- **Transfer of digital data does not imply a license to use it**
- **Receiving party indemnifies transmitting party from modification or unlicensed use**