

## Alert Waiver of Subrogation

### Risk Control

Standard AIA construction contracts presented to municipalities may contain a Waiver of Subrogation Provision usually at Section 11.3.7.

### Waiver of Subrogation Provision

The owner and contractor waive all rights against:

1. Each other and any of their subcontractors, sub-subcontractors, agents and/or employees of each other.
2. The architect, architect's consultants and separate contractors as described in Article VI.

### Loss Analysis

In most cases, state laws require that general contractors are responsible for losses incurred by subcontractors. Thus, by signing a contract with a **Waiver of Subrogation Provision**, you could limit your insurance company from collecting or bringing a possible subrogation action that can recover damages that result from negligent acts and/or poor workmanship of contractors, architects, and/or subcontractors.

We have experienced several insurance claims from situations like this. In our analysis, some potential exposure for loss could result if there is:

- Inadequate or lack of proper contractual agreements and addendum clauses are not in place.
- Failure to utilize qualified and financially sound subcontractors, suppliers, and manufacturers.
- Failure to adequately supervise subcontractors, suppliers, and manufacturers
- Failure to keep and maintain proper and adequate records.
- Faulty workmanship.
- Inadequate, improper and/or unreliable testing and inspections. (Documented)

### What to Do

It is necessary to review **all** contractual agreements thoroughly prior to signing. **All** contract agreements also need to be reviewed by your attorney and any noted Waiver of Subrogation language must be deleted and agreed to prior to approval and final signature.

### NOTE:

**Some contractors and/or subcontractors may alter standard provisions through "Supplementary General Conditions" or "Addenda" to the contract.**

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