

## [Reminder: Construction Litigation is Expensive, Be Sure It's Worth It](#)



I know, this title is yet another seemingly obvious statement in a series of them here at [Construction Law Musings](#). I seem to be going from cliché to cliché these days and musing on things from [necessary evils](#) to [naming the correct parties in a lawsuit](#).

However a recent post from my fellow "blawger" and occasional co-presenter, Craig Martin, entitled "[Is the Juice Worth the Squeeze-Thoughts on Litigation](#)" got me thinking about the litigation process and whether some lawsuits are really worth the cost, not just in money but in time, stress and effort. Despite the general thoughts that lawyers pollute the construction process with what some see as unnecessary litigation, without the clients or the fact that genuine payment disputes arise from commercial construction projects, litigation could not occur. I see it every day, the desire to vindicate "principal" through a lawsuit.

This desire to "go get 'em" when a party is wronged is both understandable and human. When another company or person breaks its promise (read "contract") through non payment for construction work performed, the first thought is likely to be on involving vindication. I get it. The only problem is that the civil court system, at least in the construction world, is set up to move money from one party to another in the form of a judgment. What that same system is not well equipped to do is vindicate principal or make people act a certain way.

This last fact means that money is the end game of any civil construction claim. Whether through a [construction bond claim](#), [mechanic's lien](#) or more run of the mill contractual claim (if such a thing exists), the end of the road for any successful claim is a money judgment that must be collected even after the process concludes. In short, if you aren't going to net a positive result *from a monetary perspective*, the claim is not worth bringing and running through the court process. If your attorney fees and opportunity costs outweigh the monetary value possible positive outcome (including the analysis of whether any judgment is collectable) (an analysis that [an experienced construction attorney](#) can assist you with) then the better play is to avoid litigation.

All of that said, you have to get paid to stay in business. As I've stated on many occasion, the best way to make sure you are as protected as possible is through a well drafted contract and the [early consultation with a lawyer](#) about your legal rights. If after doing all that you can on the front end, you end up with a claim, there are ways to resolve

these claims short of litigation (or arbitration/private court where you pay the judge). If one on one negotiation does not work, I [recommend mediation](#) as an alternative.

Why mediation? First of all, it does allow you to voice your non-monetary concerns. Second of all [it allows for flexibility that is unavailable in litigation](#). And finally, it is a *less expensive way* to resolve the dispute in a way that allows you, as a business owner, to move on with closure and at least the feeling that your fate was in your control.

In short, you need to make the business analysis up front to decide if litigation is the best route to resolve your construction payment dispute. If after the analysis of the costs and alternatives, the "juice is worth the squeeze" then go for it. Otherwise, think hard about suggesting that both sides hire a [construction dispute mediator](#) to bring closure to the situation.

Photo credit: [Wikipedia](#).

*Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.*