

Costs and Settlement of True Mechanic's Lien Litigation

The risks and uncertainties associated with *true* mechanic's lien litigation in addition to the legal costs typically make a settlement of 75% or 85% of a claim a "good settlement."

Essentially, you are litigating multiple cases simultaneously. In fact, most mechanic's lien lawsuits have multiple counts. There's a basic contract case in which you must prove your "statement of account," that you supplied labor and material in accordance with the contract, without defects and on time. It is usually good practice to plead an unjust enrichment or *quantum meruit* count in the alternative.

You must also prove your mechanic's lien, your last day of work and that you filed the lien on time. Then you need to prove that the lien identifies the correct property and property owner and that you have all necessary parties in the lawsuit. This typically means you will need a title search expert witness. There may be lien priority issues for which you need an appraisal expert witness to prove the value of the property with and without the improvements. Because of the uncertainty and volatility in case law, there may also be a high chance of appellate appeals.

You will not get even 75% of the claim unless defense counsel thinks you have a good lien, but they will never be able to completely assure a client of success. You will never get legal fees in a mechanic's lien case. It will be very rare that you get legal interest either, unless you take the case to full trial and judgment. Lawyers need to explain the "battle between innocents" and direct clients away from the idea that they "deserve to be paid." Of course they deserve to be paid, but that is irrelevant. The other innocent in the case deserves to avoid being forced to pay twice for the same construction labor or material. The "bad guy" is gone. It is unfair, but it is better to get 50 cents on the dollar than to get nothing.

It is also unusual that lien claimants have no chance. You typically talk in terms of ranges and percentages. You may think one or more defenses are "not worth anything," while another defense is a "risk that lowers the settlement value of this case." Some cases are worth 95 cents on the dollar. In other cases, 25 cents on the dollar is a great settlement. It is unusual that a case is worth nothing. Part of the lawyer's job is to evaluate whether a case is so worthless that it should not even be attempted or valuable enough to push another day or another month.

Source: NACM's *Construction Law Survival Manual*, 2015